

FORM & FUNCTIONS OF
AMERICAN GOVERNMENT

THOMAS HARRISON REED

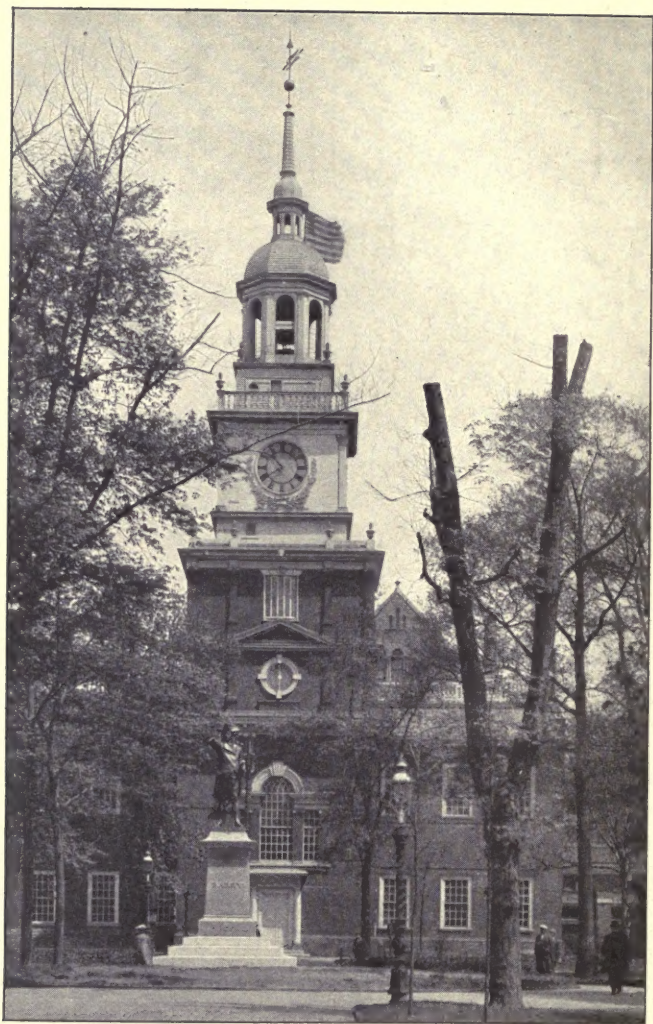
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FORM AND FUNCTIONS OF
AMERICAN GOVERNMENT



Independence Hall, Philadelphia, where the Declaration of Independence was signed by the members of the second Continental Congress and where the Constitution of the United States was drawn up by the Constitutional Convention of 1787.

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FORM AND FUNCTIONS OF AMERICAN GOVERNMENT

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Illustrated



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TO
MY FATHER AND MOTHER
EUGENE A. REED
AND
JULIA ANN MATHEWS REED

PREFACE

THIS book is the result of nine years' experience in teaching government and a lifelong interest in politics. It is intended primarily for that great majority of high-school pupils who go no farther on the road of formal education and aims to deal with the principles of governmental organization and activity in such a way as to be a suitable basis for the most thorough high-school course in preparation for citizenship. It leaves the author's hands with the cherished hope that it may help to make better citizens and better government.

In the long period during which this book has been in preparation I have received assistance from a multitude of friends and students. I am under special obligation to my colleague, Professor David P. Barrows, of the University of California, who has encouraged and advised me at every stage of the work. I am also deeply indebted for helpful criticisms of the manuscript to Professor Paul Monroe, of Teachers College, Columbia University; Professor Edward Alsworth Ross, of the University of Wisconsin; Mr. Arthur W. Dunn, Specialist in Civic Education, United States Bureau of Education; and Mr. H. W. Martin, of the Horace Mann School, Teachers College, New York City. President Tyler, of the College of William and Mary, and Professor E. I. McCormac, of the University of California, have made invaluable suggestions with regard to certain of the historical portions of the work; Professor John W. Ritchie, author of the New-World Health Series, and Dr. William F. Snow, General Secretary of the American Social Hygiene Association, have given advice concerning matters dealt with in the chapter on "The Preservation of Public

Health"; Mr. Frank A. Vanderlip, President of the National City Bank, New York City, has most kindly revised the chapter on "Money and Banking"; and Sullivan and Cromwell, Attorneys, have given a critical reading to the chapter on "The Regulation of Corporations." For cordial help in the way of supplying maps I am especially indebted to the Forest Service of the United States Department of Agriculture, the Reclamation Service of the Department of the Interior, and the Board of Water Supply of the City of New York.

These acknowledgments would be incomplete without reference to two of my students, Mr. J. R. Douglas and Mr. C. E. Martin: the former for much assistance rendered in the early stages of my task, the latter for reading the proof. This list of acknowledgments is not intended to shift the responsibility for the shortcomings of the ensuing pages. The mistakes are all mine.

THOMAS HARRISON REED

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INTRODUCTORY

INTRODUCTORY

GOVERNMENT, AND WHY WE STUDY IT

It is natural for intelligent students to inquire at the beginning of each new subject, "Why do we study this particular thing?" It is only fair to answer their query fully and frankly. **Government**

It is the habit of certain wiseacres to minimize the potency of government. Such phrases as "You cannot make men good, prosperous, or happy by law" are frequently upon their lips. There are so many other factors which must concur to make men good, prosperous, or happy, that this statement is a dangerous half truth. Its natural tendency is to discourage effort to better government. Why should any one waste time on some inept mechanism which can never accomplish the result desired? It is not true, however, that government has no effect upon the goodness, prosperity, or happiness of men. This is perhaps most clearly shown by the fact that there are numerous and moving examples of men and even nations being made bad, poor, and wretched by the action of the government. The formerly unhappy condition of the Irish peasantry in a land endowed by nature with every advantage; the Mafia and Camorra societies in Southern Italy; the backward civilization of Cuba after centuries of Spanish rule, are all examples of the harm which bad government can do. We have no right to excuse our ignorance of government on the ground that it is unimportant. It is as full of good and evil as Pandora's box. **The potency of government**

The earliest task of government, and to this day its most fundamentally important function, is that of na-

Government as a policeman

tional defense against foreign aggression. Closely allied to this duty of protecting the state from external foes is that of preserving internal order. The policeman, the judge, the jury, the jail, reformatory, and prison are the common agencies through which this work is performed. You may, if you will, regard government as a gigantic policeman, with more arms than Briareus, calming the strifes of a numerous population. We seldom stop to think when we lie down at night in the quiet of comfortable homes that the harmony at home and peace abroad which make that security possible are alike the work of government. Otherwise everything which we hold dear would be at the mercy of our strongest neighbor, while the unpreparedness of our government to defend its people would serve as a constant temptation to the aggression of other states. The work of the government as policeman and soldier is performed so regularly that it has become a matter of course with most of us. It is only when this valuable protection is withdrawn that we begin to appreciate its importance. Another of the duties of government which belongs in the same class with that of preserving order, being indeed one of the chief means to that end, is the administration of justice between individuals. Were it not for the orderly method of settling disputes provided by the courts, each individual would have to protect his own interests and the race would be to the swift and the battle to the strong.

Paternalism

For a long time these were almost the only functions of government. With the progress of civilization it became necessary to pass laws for the relief of the poor, the regulation of wages, and the control of domestic and foreign trade. When a government seeks in many ways to regulate the life and conduct of its people, we speak of it as a "paternal" government, because its relation to

the people is similar to that of a father to his children. Emerging from the confusion of the early Middle Ages, governments grew steadily more paternalistic. They prescribed what men should wear, what they should eat, what they should pay for their bread and meat. The restrictions on commerce and on the right of the people to move about from place to place in search of employment were particularly severe. The whole scheme of governmental paternalism became, about the middle of the eighteenth century, well-nigh intolerable.

The inventions of Watt, whose fundamental patent **Laissez faire** dated from 1769, made the steam engine practical. By the end of the century the application of power to spinning and weaving machinery had brought on an economic revolution. Vast social and industrial changes resulted, and the old restrictions proved vexatious and harmful. There naturally arose in England a school of writers among whom Adam Smith, Ricardo, and Senior were the most prominent, who advocated with considerable success the abolition of all restrictions on trade and labor. They wanted government to be a policeman and soldier, and nothing more. This policy is known as the *laissez faire* policy, the two French words signifying "let alone." Their theories were, at least partially, adopted by the English government, while in America the very circumstances of the struggle against the wilderness left men free to do as they pleased industrially.

It was not long, however, before the impossibility of a *laissez faire* policy with regard to trade and industry became evident. For example, the advent of machinery made it possible for children to be employed in large numbers to guide the speeding wheels and spindles. They were occupied for periods of from twelve to fourteen hours a day under conditions the most frightful imaginable. **Breaking down of laissez faire**

They were helpless to protect themselves, and their parents, who frequently had been thrown out of employment by these very machines, were too dependent on the earnings of the children to resist the temptation to set them to work. Crime was increasing. The race was positively degenerating under the conditions that prevailed. The necessity for the passage of acts limiting the hours of labor of women and children, regulating the sanitary conditions of factories, and otherwise securing for them the protection they could not get for themselves became irresistible. The first child-labor law in England was passed in 1802,¹ the first law limiting the hours of women to ten per day in 1847. American legislation was adopted even later because of our less rapid industrial development. As the present era of industrialism has advanced, it has become more and more the part of government to protect the helpless weak against the strong. We have never, however, returned to the vexatious regulations of the food and clothing of the people which prevailed in former times. Our modern paternalism is more rational and beneficent.

Simple conditions of early American life

There was a time when the life of the American people was a very simple thing indeed. The country was preponderantly agricultural and the average American lived on a farm or in a small village. If he wanted water, he drew it from the family well. If he wanted milk, his resort was to the family cow. The eggs which we buy at five cents apiece were provided in profusion by the family hens. Many other articles of food were raised on the place. Fresh meat was procured from the animals slaughtered in turn by the neighboring farmers. Medicines were found largely in the herb garden. If a journey

¹ Applied only to pauper children. Protection from parental exploitation came even later.

were in contemplation, it was only necessary to hitch the faithful farm horses to the rusty old wagon and go. Every family was mutually independent, or at the very most was dependent only on a narrow circle of other families with whose character and conduct it was already thoroughly familiar.

If at the present day the average American wants water, he turns a wall tap above the sink and gets water, it is true, but whether pure or reeking with disease, he cannot know. He is dependent on a distant water supply and the strange men in charge of it. When he finds on his back steps a bottle of what purports to be milk, he knows nothing of the contents beyond the representations of those who supply it. Every article of food which he uses, every piece of clothing he wears, are made for him by persons over whose cleanliness or honesty he has no possible means of personal control. Even in taking a journey, unless he is so fortunate as to own an automobile, he is hurtled toward his destination in a conveyance utterly beyond his control either as to the conditions of the service or the rate at which it is rendered. Instead of being individually independent, we have become mutually dependent. The complexity of industry has been carried so far that no one except the farmer ever completes all by himself a usable commodity, and even the farmer is becoming year by year more of a specialist. Many fruit growers, for example, are as dependent on their store purchases as the clerk or the manufacturer.

Now when it comes to a matter of protecting the individual against fraud or bad service, since he is as an individual so insignificant as to be helpless, there is no hope except in the activities of government. We therefore have today an increasing number of functions which the government undertakes for the benefit of the people.

**Complex
conditions
of modern
life make
individual
helpless**

**The func-
tion of
modern
government**

Education is undoubtedly the most important single task which government has assumed. More than one fifth of all the revenues of our states and cities are used for education. The study of the causes of disease, the inspection of foodstuffs, the enforcement of sanitary laws, the distribution of information, the establishment of quarantines, are among the new functions of government. The care of the poor, the insane, the unruly boys and girls, the men who have but once gone wrong, and finally of the genuine criminals, are duties which the modern government undertakes. The building of roads and bridges, the cleaning of streets, the construction of drains and sewers, the removal of refuse, the supply of water, are services which government renders for the protection and improvement of the people. The ownership and operation or the regulation of public utilities, such as the supply of gas, electric light and power, water, telephone and telegraph communication, and transportation, are obligations more or less clearly accepted by governments today. Indeed, not only is government necessary to the preservation of public peace and order, but it is necessary to the ordinary business of living, as we must live in modern society.

**Why we
should study
government**

This is the great reason why every American youth should study government. There is no other material force which will influence your lives and the lives of your associates to so great an extent as government. Many of the primary conditions of life are secured for you by the government and can be secured for you in no other way. You are about to begin the study, not of a cold abstraction, but of a living thing, pulsing with the life blood of the millions of our nation. It means happiness or unhappiness, prosperity or misery, good or evil, to them. Which they will receive, is your responsibility.

You are to be participants in the work of government, and the work must not go wrong through your ignorance or neglect.

SUGGESTIONS FOR FURTHER STUDY

This chapter is intended merely for the purpose of creating interest in the work which is to follow. It is suggested that the teacher amplify the outline of the functions of government contained in the text. Special emphasis should be laid on recent social activities of your own state or city governments. A class discussion on the duties of citizenship will be very much in order.

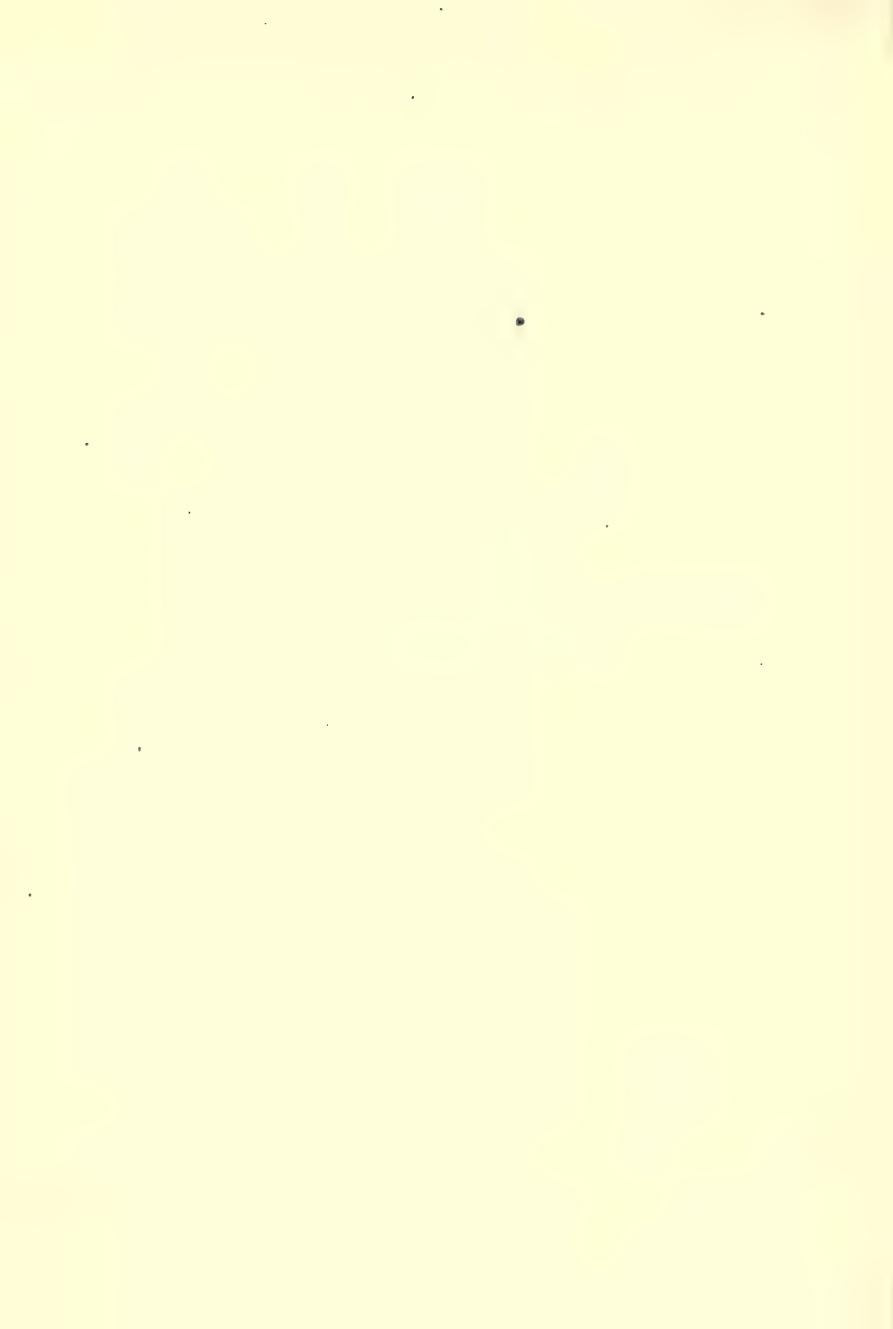
On paternalism and *laissez faire*, see CUNNINGHAM, W., *Outlines of English Industrial History*, pp. 89-109, where a brief account is given of the industrial conditions of the seventeenth and eighteenth centuries. LEACOCK, STEPHEN, *Elements of Political Science*, pp. 357-410, discusses the matter very intelligently.

Among the best books on the obligations of citizenship are: ROOT, ELIHU, *The Citizen's Part in Government*; BRYCE, JAMES, *The Hindrances to Good Citizenship*; GODKIN, E. L., *The Duty of Educated Men in a Democracy*.

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PART I

THE BACKGROUND OF AMERICAN
GOVERNMENT



CHAPTER I

ENGLISH AND COLONIAL ORIGINS

WE must never make the mistake of supposing government to be a fixed and stationary object capable of description once and for all. As a matter of fact, it is the subject of an evolution much more rapid than that of the physical world. We cannot get a very clear idea of it as it exists at this moment unless we understand something of its origin and growth. If for no other purpose than to emphasize the changing character of institutions and to prevent blind worship of things as they are, it is worth while to trace its evolution.

**Evolution-
ary char-
acter of
government**

It is easy to find the source of our present system of government in that of England and her "Thirteen Colonies." The settlers of the English colonies in North America were almost wholly English. The Dutch in the single province of New York, and the French Huguenots scattered along the seacoast, earned a prominence in our early history entirely out of proportion to their numbers. The Germans, who were more numerous in Pennsylvania than elsewhere, were a mere drop in the bucket compared to the English population of the Quaker colony. The Scotch and Irish, mostly Protestants from the north of Ireland, were, in advance of their coming, thoroughly Anglicized. For a period of nearly three quarters of a century after the establishment of the last colony, but comparatively few immigrants came to this country. At the same time the population increased with enormous rapidity while the almost uniform conditions of frontier life worked steadily to destroy preëxisting dif-

**The Ameri-
can people**

ferences of race or training. During the formative period of American institutions, therefore, the United States had, if not an exclusively English population, at least a population impregnated exclusively with English political ideas. This assured the continuance of English traditions of government.

Continuous
develop-
ment from
English
originals

The political institutions of seventeenth-century England were brought to America by the early settlers. They were only modified by a century and a half of colonial experience. When, in 1775, the break with England came, there was, as we shall see, no revolution in the form of government at that time existing in the colonies. Among the more important changes were a broadening of the suffrage, an increase in the power of the legislature, and some provision for the election of a governor to replace the evicted representative of the crown. Indeed, two of the states, Connecticut and Rhode Island, whose colonial charters had provided for elective governors, kept on with these charters until well into the nineteenth century. The state governments of today are the legitimate successors by a very easily traced process of development of the state governments of 1776-80. The systems of local government which we at present find in the various parts of the United States are the direct descendants of the local governments of colonial days. The national government itself is only an application to a larger field of the experience of its framers with the old colonial government and new state governments. This should be enough to explain why you are asked at this point to give attention to certain matters which may appear at first sight to be rather remote in point of time from the government of the United States.

The earliest colonial charters were simply charters granted to bodies of Englishmen to trade and make

settlements in certain ill-defined portions of the New World. They were in all essentials similar to those of the East India Company and the Hudson Bay Company, which long continued to be operated as trading companies. They provided in general for a "governor" and "council," or board of "assistants," all resident in England. These authorities made such arrangements as they pleased for the government of the settlements they planted, subject to provisions of the charter which secured to every colonist the rights of an Englishman. The first settlements made by the Virginia Company were governed in a military manner. In 1619, however, an assembly or House of Burgesses, elected by the several "places and plantations," was established to assist a resident governor and council in the management of the colony.

**Trading-
company
charters**

When, in 1624, the charter of the Virginia Company was revoked, the same form of government was perpetuated in the colony now under the immediate control of the king. Virginia was the earliest of the "crown colonies," to which class also belonged New Hampshire, New York, New Jersey, North and South Carolina, and Georgia. In all of these colonies the form of government was prescribed in the commission of the governor sent out from England to represent the king's authority. They were practically alike, and one description can be made to serve for all.

**The crown
colonies**

The governor was appointed by the king and was the chief executive officer of the colony. He was assisted and advised in almost all matters by a council, also appointed by royal authority, so that the executive department really consisted of a governor and a board of advisers. They together appointed most of the colonial officers, including the judges, exercised the power of pardoning persons convicted of crime, and performed many other

**The
governor**

functions. The governor had the power of summoning the legislative body and of proroguing and dissolving it. He also had the power of refusing assent to the laws passed by the colonial legislature, — the power of veto. In short, the governor was a copy of the king reduced in dignity and subject to the approval of a council in most of his actions.

**The legis-
lature**

The council not only advised the governor in the exercise of his executive functions, but acted in Virginia as a high judicial court and in the other royal colonies as the supreme court. It was besides, in all these colonies, the upper of the two houses of the legislature, corresponding in this respect to the House of Lords. The lower house of the legislature, corresponding to the English House of Commons, was known as the "assembly," and was elected by those of the people who owned an amount of property varying in the different colonies, but sufficiently large to deprive a great proportion of the population of the privilege of participating in politics.¹ This house elected its own officers and was the judge of the qualifications of its own members. Its term of office was not very definite. The governor exercised rather arbitrarily his power of summoning, proroguing, and dissolving — so much so, indeed, that the colonists complained bitterly of it and made it one of the items of tyranny recited in the Declaration of Independence. Laws were made by the concurrent action of the two houses of the legislature and the governor.

Laws repugnant to those of England were void, and all laws required the approval of the king as well as the

¹ Universal suffrage prevailed in Virginia until 1671, when the freehold qualification was prescribed. Even after that time, since the freehold was not defined, all freemen continued to enjoy the right to vote until 1736.

governor. The ordinary statutes went into effect as soon as the governor had affixed his signature, but the more important laws, especially those which might produce an immediate and irremediable effect, had to contain a clause suspending their operation until the king's pleasure might be known. As the king was by no means prompt in his treatment of these measures, this again grew into a grievance of the colonies against the crown. Further, an appeal lay from the highest court of each colony to the "king in council," which really meant certain members of the privy council, who were at the same time the more important judges of the English courts. Thus the colonies early became accustomed to having their statutes and their judicial decisions annulled by a superior authority.

Laws repugnant to the laws of England

A second class of colonies, Pennsylvania, Delaware, and Maryland, were known as "proprietary colonies," from the fact that their territories and the right to exercise within them the powers of government had been granted to individuals who stood in the same relation to them as did the king to the crown colonies. There was little difference between the form of government of Maryland and that of the crown colonies, Pennsylvania and Delaware, which were governed under the same "Charter of Privileges" granted by William Penn and had but one governor between them. The council in these colonies did not act as an upper house of the legislature, but only as a check upon the executive power of the governor. This was a marked divergence from the English practice of two legislative houses, which has been almost universally followed in English-speaking countries. The right of appeal from the decisions of the courts of the proprietary colonies to the privy council was the same as in the crown colonies.

Proprietary colonies

The charter colonies

Rhode Island and Connecticut were called the "charter colonies," because in them the powers of government were conferred directly on the "freemen" of the colony by royal charter. The term "freemen" did not include every free man, but meant, during most of the colonial period, those persons who owned property of a certain value. The freemen chose annually two members of assembly from each town. These, with the governor, deputy governor, and twelve assistants, constituted the "general court" of the colony, which chose the governor, deputy governor, and assistants for the ensuing year. The governor presided over the council, of which he and the twelve assistants were members and which as a body exercised the executive power. The governor had no veto and there was no provision for the submission of the laws of the colony to the king for his consent. The council was the upper house of the legislature, the assembly, the lower. The latter was by far the more influential. Very liberal powers were given by the charter to the general court, including the right to create and fill the necessary judicial and executive offices. Nothing was said in the charters about the right of appeal from the supreme court of the colony to the privy council, but as a matter of fact cases were appealed.

Massachusetts

The remaining colony, Massachusetts, was in a class midway between the royal and charter colonies. Its original charter was a trading-company charter not dissimilar from that of Virginia, except that there was no specification of the place at which meetings of the company were to be held. A majority of the freemen, or members of the corporation, emigrating to America, brought the charter with them and used it as an instrument of government in the colony. The freemen, who were at first liberally admitted, met in mass meeting, but this soon

proved inconvenient and after trying a system of proxy voting they came to be represented by deputies. These deputies sat at first with the assistants as one body, but later, just why or when we do not rightly know, they separated into two distinct houses. The government thus organized was practically independent of England, a result to which the troublous times of the Stuarts largely contributed. The most important of its acts for our present purposes was the "Body of Liberties," in which, in the midst of a great deal that was harsh and cruel, the rights of the individual were defined in language prophetic of the Bills of Rights of later constitutions. In 1684, however, the charter was revoked by the king's judges, and after seven years of charterless existence a new and less liberal charter was granted. The principal difference between it and the royal charters was that in Massachusetts the council was elected by the assembly and the colony possessed a supreme court apart from the council. Its situation with regard to the mother country was the same as that of the royal colonies.¹

In all of the colonies there was constant friction between the assembly elected in the colony and the governor and

¹ GENERAL SCHEME OF COLONIAL GOVERNMENT

COLONY	EXECUTIVE	LEGISLATIVE	JUDICIARY
<i>Crown Colonies</i> Georgia New Hampshire New Jersey New York North Carolina South Carolina Virginia	Governor and council appointed by the crown	The council as upper house and a lower house elected by the property owners	Inferior judges appointed by the governor and council. Council court of highest appeal, except for a time in Virginia, when it was the council and House of Burgesses

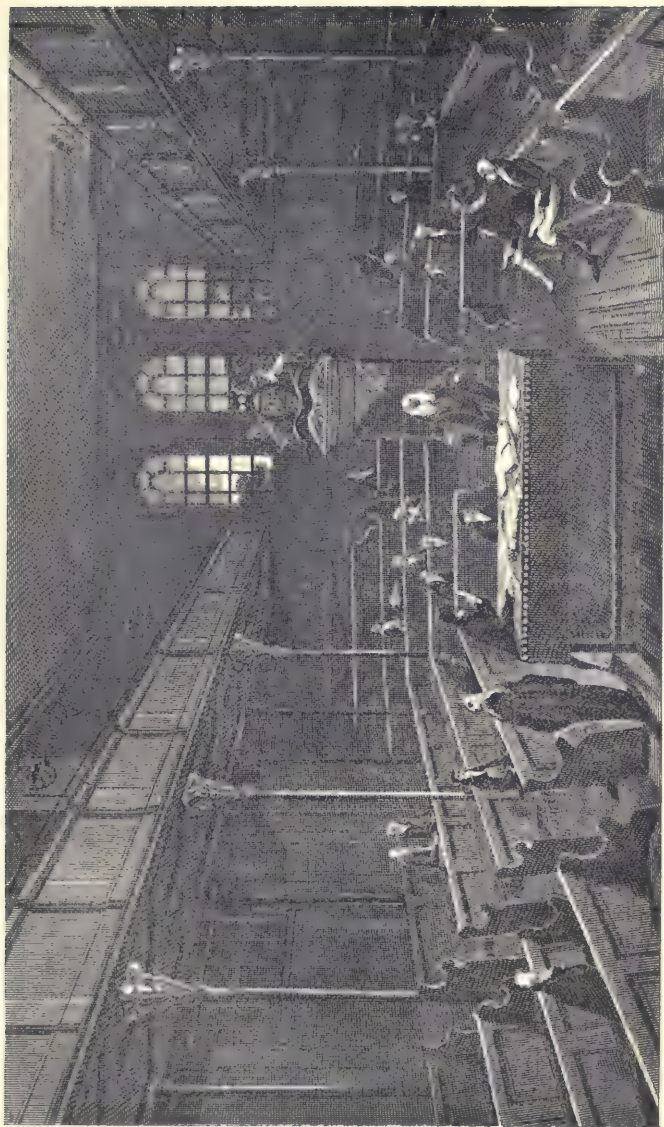
(Continued on page 18)

**Popular
assembly vs.
royal
governors**

council appointed by royal authority. The governors brought with them from home instructions which frequently did not conform to the interests or ideas of the colonists. It seems very clearly proved by modern historical investigation that the colonists were by no means uniformly liberal and patriotic in the assumption of burdens even for their own defense against the French and Indians. They doubtless did much to harass and annoy the representatives of the king. At the same time the officers sent out from England were frequently men of little tact and discretion, with the result that they needlessly wounded the susceptibilities of the Americans.

GENERAL SCHEME OF COLONIAL GOVERNMENT (*Continued*)

COLONY	EXECUTIVE	LEGISLATIVE	JUDICIARY
<i>Proprietary Colonies</i> Delaware Pennsylvania	Governor and council appointed by the proprietary	An assembly elected by the property owners	As in crown colonies, except that there was a separate supreme court appointed by the governor
Maryland		The council and an assembly elected by the property owners	As in crown colonies
<i>Charter Colonies</i> Connecticut Rhode Island	Governor and assistants elected by the general court	General court, consisting of assistants and an assembly elected by property owners and freemen	A separate supreme court
Massachusetts	Governor appointed by the crown and a council elected by the assembly	The council and an assembly elected by property owners	A separate supreme court



The old House of Commons, the mother of modern representative legislatures, as it appeared in 1776. (From an old print.)



A real divergence of interests was soon developed, and as the time drew near when the colonies, grown too large and independent for tutelage, would demand the right to govern themselves, the mother country prepared to exercise more vigorously her parental authority. Whatever the merits of the disagreement, it centered about the relations of the popularly elected branch of the legislature and the governor and his council.¹ One result of the long controversy was that the people came to regard the assembly as their natural friend and the governor as their enemy. In other words, the legislature became popular and the executive unpopular. This had a marked effect upon the later distribution of power between the executive and the legislature. Another consequence of the struggle was that the speaker of the assembly, as its leader and as the highest officer owing his power to the popular will, became the most influential political leader in the government. This, too, we shall see has had important after-effects upon our institutions.

It is impossible to get a clear conception of the nature of colonial government without a study of the electoral franchise. In every colony the franchise was limited to property owners, and in most cases to land owners. Catholics were disfranchised in all of the colonies; Quakers in all the colonies north of Virginia, except Pennsylvania and Rhode Island; Jews specifically in New York and probably, by implication, in all the rest. In Massachusetts one had to be a Christian of "orthodox belief." Of course these restrictions were not as harsh as might at first sight appear. It was easy to acquire ownership of land in a country where land was plentiful and cheap.

Colonial
suffrage

¹ The same difficulty has been experienced by England in the control of her English-speaking colonies and by our own Government in the Philippines and Porto Rico. (See Chapter XXVI.)

There were few Catholics, few Quakers, except in Pennsylvania, and even in New York City, where they now constitute one fourth of the population, only a few Jews.¹ The proportion of voters to the total population was larger than in England, but much smaller than in this country today. In Pennsylvania, for example, where the qualification was the ownership of fifty acres of land, ten of which had been cleared, or of fifty pounds' worth of personal property, one person in ten could vote in the country districts and only one in fifty in Philadelphia. Something like nine per cent of the population was qualified to vote in Rhode Island, and sixteen per cent in Massachusetts and Connecticut. Furthermore, only a small number of those entitled to vote actually did so, the disproportion being most striking in the colonies just named, where frequently only one person in fifty voted.²

English law

One of our most important inheritances from England was the English common law. The Anglo-Saxons, like

¹ PROPERTY QUALIFICATIONS IN THE COLONIES

Connecticut :	40 shillings freehold, or, after 1715, £4 personalty.
Delaware :	50 acres freehold, of which 12 must be improved, or £40 personalty.
Georgia :	50 acres freehold.
Maryland :	50 acres or £40 personalty within the county.
Massachusetts :	40 acres freehold or £50 personalty.
New Hampshire :	40 acres freehold or £50 personalty.
New York :	A freehold of the value of £40.
North Carolina :	50 acres freehold.
Pennsylvania :	50 acres, of which 10 must be cleared, or £50 personalty.
Rhode Island :	Freehold of the value of £40 or of 40 shillings per annum.
South Carolina :	100 acres or £60. personalty.
Virginia :	100 acres or 25 acres with a house (after 1736).

² "At best the colonial elections called forth relatively and absolutely only a small percentage of the voters. Property qualifications, poor means of communication, large election districts, and the absence of party organization combined to make the most sharply contested elections feeble in their effects upon the community as compared with the widespread suffrage of the twentieth century."—A. E. McKinley, *The Suffrage Franchise in the Thirteen English Colonies of North America*.

all the other primitive Teutonic peoples, built up a great body of customs which from frequent application in the decision of disputes came to be genuine laws. On the continent of Europe these national laws, in imitation of the Roman law, were written out in codes. In England, however, legal development was slower. The Norman kings established a powerful centralized corps of judges before the law had reached the codifying point. These judges decided the cases which came before them "according to the law of the land." When there was any doubt as to what the law was, they fell back on the previous decisions rendered by the royal courts. The English law thus came to be a judge-made or precedent law. It was to be found, not in a code or series of codes, but in the reports of decided cases for several centuries. It was, of course, supplemented by occasional Acts of Parliament, but these dealt with particular parts of the law and not with the law as a whole. In this "common law" were embedded the fundamental rights of Englishmen which even the king must respect and which at one time it was supposed even an Act of Parliament could not destroy. It was upon these rights that the colonists relied in their contest with the crown and Parliament. The colonial courts applied the common law and statutes of England as they stood at the time of the settlement of the colony and such other English statutes as specifically applied to the colonists. The right of appeal to the privy council from the highest courts in the colonies tended to keep the law of them all uniform and true to the English standard.

We took over as well the English distinction between law and equity. The rules of the common law became at an early date very rigid and failed fully to meet the needs of an expanding civilization. Cases arose in which justice

Equity

could not be obtained at law. For example, if a man pledged the legal title to his land as security for the payment of a debt, — in other words, mortgaged it, — the law would enforce the forfeiture of the whole piece of land, no matter if it was worth many times the amount of the debt. This and many other cases were taken directly to the king as the “fountain of justice,” who habitually referred them to his lord chancellor to do equity between the parties. The king’s chancellor would in the case of the mortgage order the property sold and the surplus over the amount of the debt paid to the original owner. Furthermore, certain rights not enforceable by law came to be enforced by the court of equity, the chancery. The only remedy which could be given by a court of law was damages. Chancery went further and commanded the defendant to stop doing the thing which caused the injury. If he did not obey, he was imprisoned for contempt. It also could order the defendant to do an act, which he owed a duty to perform, for the benefit of the plaintiff. Separate courts of equity existed in many of the colonies.

**Judicial
procedure**

We also derived from England our whole system of conducting judicial proceedings. The most characteristic features of the English system were trial by a jury of twelve men picked at random from the county, and the elaborate rules for the admission or rejection of evidence which had grown up in connection with it. Along with these we took the method of examining witnesses, the necessity for indictment or presentment by a grand jury in criminal cases, and many other lesser matters. We laid, however, in colonial times the foundation for a wide departure from English practice in the creation of public prosecuting officers.

SUGGESTIONS FOR FURTHER STUDY

To familiarize the student with constitutions and similar documents, it is suggested that they be sent whenever possible to the colonial charters, etc. The charters may be found in somewhat abbreviated form in MACDONALD, W., *Select Charters and Other Documents Illustrative of American History*. BEARD, C. A., *Readings in American Government and Politics*,¹ pp. 2-6, gives a typical commission issued to the governor of a royal province. Any of the standard histories of the colonial period, such as those of Doyle, Osgood, Fiske, Channing, etc., contain a great deal of material on colonial government.

For more detailed study on the part of advanced students, GREENE, E. B., *The Provincial Governor in the English Colonies of North America*, will give a more general account of colonial government than its title implies. Reference also may be made to RAPER, C. L., *North Carolina, A Study in English Colonial Government*; MCCAIN, J. R., *The Executive in Proprietary Georgia*. STEVENS, C. E., *Sources of the Constitution of the United States*, gives us the English point of view. BORGEAUD, CHARLES, *The Rise of Modern Democracy in Old and New England*, is an able and suggestive book. FISHER, SIDNEY GEORGE, *The Evolution of the Constitution of the United States*, traces in colonial charters and state constitutions the ancestry of every portion of our present Constitution. The value of the book is marred by inaccuracy in details. The full text of all the charters may be found in THORPE, F. N., *American Charters, Constitutions, and Organic Laws*.

Topics:

The Charter of Any Colony.

The Suffrage in the Colonies.

The Colonial Governor.

The Upper House of the Colonial Legislature.

Appeals to the Privy Council.

¹ This work will hereafter be cited as BEARD, *Readings*.

CHAPTER II

THE EARLY STATE CONSTITUTIONS

Provisional
govern-
ments

THE outbreak of the Revolution, of course, brought to an end the legally existing governments of the thirteen colonies. The royal governors departed with less dignity than speed. The executive and judicial departments were paralyzed. There was in most of the colonies no legal authority which could summon the assembly. In these circumstances, powers of government sufficient to carry on armed opposition to the crown of England were assumed by provisional assemblies chosen in a variety of ways. In Massachusetts the colonial assembly which had been duly elected, but which the governor refused to recognize, met and took up the reins of government. In Virginia the people met in convention and appointed a committee of safety. In other colonies more or less irregular means were used in constituting these bodies, and they were mostly little more than Revolutionary committees. Under their direction, however, the preparations for war went forward and actual hostilities began.

State con-
stitutions
established
on advice of
Congress

In the autumn of 1775, the Continental Congress, in response to requests from New Hampshire, Virginia, and South Carolina, advised those states to "call a full and free representation of the people in order to form such a form of government as in their judgements" should seem desirable until the difficulties with the mother country should be settled. This resulted in brief and temporary constitutions in New Hampshire and South Carolina. In May, 1776, Congress addressed to the states a general recommendation: "where no govern-

ment sufficient to the exigencies of their affairs has hitherto been established, to adopt such government as shall in the opinion of the representatives of the people best conduce to the happiness and safety of their constituents in particular and America in general." During the year that followed (1776-7), Virginia, New Jersey, Pennsylvania, Delaware, Maryland, Georgia, and New York adopted frames of government as states. South Carolina remade her constitution in 1778. Massachusetts, after one abortive effort, adopted in 1780 what is still her constitution; and New Hampshire replaced her first fragmentary constitution with one new and elaborate in 1784. These constitutions were prepared by conventions especially selected for the purpose, and contained such provisions for their amendment as to take it out of the power of the legislature to alter them by the ordinary process of law-making. The Massachusetts constitution was not only prepared by a convention chosen for that sole purpose, but was submitted to ratification by popular vote, a practice that has since been generally adopted in the states of the American Union.

That our Revolutionary forefathers should have displayed as much practical wisdom as they did in drafting these frames of government, every one of which actually worked, is not so remarkable if we remember the institutions under which they had been trained. In the first place, the charter colonies, including Massachusetts, and the colonies of Pennsylvania and Delaware had what were practically written constitutions. These constitutions were beyond the power of the colonial legislature to change and any act of the legislature contrary to their terms could, in the case of the charter colonies, be held of no effect by the privy council. In the crown colonies the commissions of the governors, in which time after

Colonial
origin of
written
constitu-
tions

time the same form of government had been outlined, supplied the place of a more formal constitution. It was most natural, therefore, for the men of 1776, when they found themselves without a government, to take to constitution writing.

Revolution-
ary move-
ment not
radically
democratic

They were further assisted to good working results in the new constitutions by their practical disposition. Aside from certain theories, employed with vigor in making their case against the English crown, they were not given to abstract conceptions of what government ought to be. They had no disposition to frame Utopias. They were satisfied to employ makeshifts and compromise if they could only get a practical result. In this they differed most markedly from the French Revolutionists, who put into their constitution of 1791 many beautiful ideas and principles. Our forefathers were statesmen, and not philosophers. They were, furthermore, not driven forward by public opinion to political changes of a radical sort. The American Revolution was only in small part a democratic movement. It is true that it found support chiefly among the common people and was generally opposed by the wealthy and aristocratic elements in the community. There was also a great deal of talk about the rights of man and frequent reiteration of the theory that "Governments derive their just powers from the consent of the governed." In all of this, however, there was apparently no idea that such doctrines involved the right of all men to participate in the affairs of the government. There was little or no complaint on the part of the people against the form of government then in vogue. It need not surprise us, therefore, that only slight progress was made toward the establishment of democracy in the early state constitutions. From this degree of progress there was shortly after a distinct reac-

tion in the Constitution of the United States. It is very important from the point of view of genuine comprehension of the development of both our state and national constitutions to understand these first revolutionary changes in the form of our state governments.

The early state constitutions were in every instance merely adaptations or modifications of colonial institutions. In so far as our revolutionary forefathers tried to copy the English institutions of their day, they showed that they did not really understand them. Whereas, during the seventeenth and eighteenth centuries, the English monarchy underwent a complete transformation of spirit, there had been little change in its outward form. It seemed to be in practice what it was in theory, a government of three independent departments. The king was the sole executive. In him alone were vested all the vast royal powers which devolved upon the crown by custom or statute. The legislative power was vested in the king and in a Parliament consisting of the House of Lords and the House of Commons, which had, according to the law, no other control over the king and his ministers than the right to impeach them for high crimes. The judicial department was vested in four great courts, the judges of which were appointed by the king for life and which to a high degree were independent of the other departments.¹

Colonial
misconcep-
tion of the
real nature
of English
government

As a matter of fact, however, the legal powers of the English king and Parliament had been overlaid by customs as to their exercise which had completely revolutionized the character of the government. The king could in reality act only through ministers who must

¹ The government of England was thus described by two great writers widely read in America during the revolutionary period: Montesquieu, in his *L'Esprit des Lois* (*The Spirit of Laws*), and Blackstone, in his *Commentaries on the Law of England*.

resign their positions if the House of Commons expressed its disapproval of their conduct. The regular course of things was for these ministers to meet, determine what they thought ought to be done, and then inform the king of their determination. In fact, England was governed by Parliament through ministers responsible to the House of Commons. This form of government, which we call the "responsible ministry" form, has worked out very happily in England during the last century, and has some distinct advantages over the form of government that prevails in this country; but for good or ill our fathers were unconscious of its existence.

Qualifica-
tions for
voting and
office-hold-
ing

The changes in the suffrage were all in the democratic direction, but by no means radically so. Property ownership was still the condition of voting in practically all the new states, although the amount of property required was generally reduced. Religious qualifications were abolished except in Massachusetts, where the prospective voter must profess the Christian religion, and in North Carolina, where he had to be a Protestant.¹

¹ PROPERTY QUALIFICATIONS IN EARLY STATE CONSTITUTIONS

DATE OF ADOPTION OF CON- STITUTION	STATE	QUALIFICATIONS
1776	Connecticut	Freehold of 40 s. annual value or £40 of personal property
1776	Delaware	Payment of state and county tax
1777	Georgia	£10 personalty, payment of taxes, or being a mechanic
1776	Maryland	Ownership of 50 acres of land or of £30 personal property
1780	Massachusetts	Freehold of £60 value or £3 of income (Must profess the Christian religion)
1776	New Hampshire New Jersey	Freehold of any value Ownership of an estate worth £50
1784		
1776		

There were also property qualifications for governor and other state officers. In South Carolina the governor had to have a freehold estate of £10,000 value. In Maryland it was £5000, and a requirement of £1000 was common. State senators in several states were obliged to own real property worth at least £1000. For the lower house the qualifications were smaller, although £500 was the sum fixed in several states. The religious opinions of legislative and executive officers were considered of more importance than those of mere voters, and these early constitutions were very stringent in requiring them to be Christians, —usually of the Protestant confession.

In the organization of the legislative department there was also some departure from the colonial arrangements. A certain general distrust of power was evident in the establishment everywhere of annual election of the lower house of the legislature. There were to be no more long intervals between meetings of the representatives of the people at the whim of the executive. In seven of the thirteen states the upper house was elected by the people. In four it was chosen by the lower house. In

Form of the
legislature

PROPERTY QUALIFICATIONS IN EARLY STATE CONSTITUTIONS (*Continued*)

DATE OF ADOPTION OF CON- STITUTION	STATE	QUALIFICATIONS
1777	New York	Freehold of £100 value to vote for senator. Freehold of £20 or 40 s. income to vote for other officers
1776	North Carolina	Freehold of 50 acres to vote for senator. Tax payers might vote for assemblymen
1776	Pennsylvania	Payment of taxes
1776	Rhode Island	Freehold of £40, or 40 s. per annum rental value.
1778	Virginia	Freehold of fifty acres, or twenty-five with a house (adding poll tax in 1781)

one, Maryland, it was chosen by electors, wherein some people see the origin of the method of electing the President of the United States. Pennsylvania continued to get along with a single legislative chamber. Except in three states, Connecticut, Rhode Island, and Georgia, the upper house ceased to be itself a branch of the executive department, although in several states certain of its members were members of the governor's council. Each of the two houses had everywhere the right to provide for its own internal organization, and the Speaker continued to occupy, if not exactly the place which had been his before Independence, a position of great influence and power. It is interesting to note, too, that the lower house was called the "assembly" in six states, the "house of representatives" in four, the "house of delegates" in two, and the "house of commons" in one. Seven states gave the name "senate" to their upper house.

**Dominance
of the
legislature**

More significant than any changes in form was the increase in relative importance of the legislative department, especially as compared with the executive. We have already seen how the political struggle which preceded the Revolution was to a large extent between the royal governor and the popular representative assembly. Such a contest inevitably led to a distrust of executive authority and a distinct unwillingness to create another master in the place of the one they had shaken off. On the other hand, the assembly, which had all along been the great champion of popular rights, seemed to be the safest place in which to locate power. The result was that the earliest state constitutions centered nearly everything in the legislature. In ten states the governor was elected by the legislature. Even in Massachusetts, New Hampshire, and New York, where he was chosen by the people, his executive power was to a considerable extent shared

by the legislature. In Virginia, Massachusetts, and New Hampshire a council, elected by the joint action of both houses, limited his authority in the matter of appointments, pardons, etc. In New York the governor's appointments had to be ratified by a council of appointments, consisting of one senator from each district. In Massachusetts the governor was given a veto on the acts of the senate and the house of representatives, but, unlike the absolute veto of the colonial governor, a measure to which he refused his assent might still become a law if passed by a two-thirds majority in each house. In New York a veto of similar effect was vested in a council of revision, consisting of the governor and two judges. Aside from these two states, the governor had no veto, such a power being obviously out of place in the hands of an officer elected by the very body whose acts he would, if he possessed it, be required to negative. In all the states where the upper house itself did not act as his council, the executive power was in part exercised by a council elected by the legislature, usually from among their own number. The judges were appointed by the governor, with the advice of his council, in five states, and in the others were elected by the legislature. In one of the five states where judges were created by executive appointment, Pennsylvania, they could be removed by the legislature. The early constitutions commonly provided for the impeachment of executive and judicial officers. The terms for which such officers were elected were usually not more than one year. In other words, the executive was everywhere, except in Massachusetts, New Hampshire, and New York, completely subordinated to the legislature, and in those three states his power was closely hedged about.

All taken together, while no radical changes had been made in the form of the government, and while the suf-

Responsive-
ness to
popular will

franchise had been extended only a short distance in the direction of democracy, the government was necessarily responsive to the wishes of those who did possess the franchise.

Bills of rights

About half of the first crop of state constitutions contained, besides the framework of the new government, an elaborate statement of the rights of man and of the general principles of free government. Among the rights thus guaranteed were those of liberty of worship, security of life, liberty, and property according to law, free elections, trial by jury, liberty of speech and of the press, freedom from bills of attainder and of ex post facto laws, right to bear arms, and freedom from quartering of troops. Among the principles of government most emphasized was that of frequent elections, which to the people of that day meant annual elections. The constitution of Virginia provided: "That the legislative and executive powers of the State should be separate and distinct from the judiciary; and that the members of the two first may be restrained from oppression, by feeling and participating the burdens of the people, they should, at fixed periods, be reduced to a private station, return into that body from which they were originally taken, and the vacancies be supplied by frequent, certain, and regular elections, in which all, or any part of the former members, to be again eligible, or ineligible as the laws shall direct." Nowhere has the democratic theory of government been expressed more clearly.

Separation of powers

Another principle of the early constitutions was that of the separation of powers. This idea had its classic expression in the constitution of Massachusetts: "In the government of this commonwealth, the legislative department shall never exercise the executive and judicial powers, or either of them; the executive shall never exer-

cise the legislative and judicial powers, or either of them; the judicial shall never exercise the legislative and executive powers, or either of them; to the end it may be a government of laws, and not of men.”¹

In the disturbed conditions which followed the end of the war for independence, widespread distress among the common people brought about the control of the readily responsive mechanism of government by persons who threatened the right of property and seemed unable to bring about that internal peace and good order which was so essential to the restoration of prosperity. All sorts of schemes for the relief of debtors, the printing of wildcat paper money, and other measures equally indefensible, were attempted. This inevitably led to a conservative reaction, to which movement we owe in part the Constitution of the United States. This movement did not propose to narrow the suffrage but it established a system of checks and balances, which, while it left the people apparently as much power as ever in the election of officers, as a matter of fact made it very difficult to do anything about which everybody was not agreed. The gubernatorial veto was widely introduced at the same time that the governor was made elective by the people for a term ordinarily longer than that of the legislature. Both houses were made elective by the people, the upper usually for a longer term than the lower. Each of these changes made it more difficult for public sentiment to result in action. The courts assumed the right to hold void statutes which, in their opinion, violated the Constitution, thus establishing another barrier to the popular will. While these changes were less marked in the states than in the national government, there was evident for some time a tendency away from democracy and toward

**The con-
servative
reaction**

¹ Part I, Article xxx.

a system more favorable to property and the interests of the rich and well born. When this tendency had spent itself, the great movement for democracy, world-wide and ages old, resumed its onward march.

SUGGESTIONS FOR FURTHER STUDY

An excellent, careful account of the organization of early state governments will be found in THORPE, F. N., *Constitutional History of the American People*, pp. 60-100, showing which features were based on English forms, which were original, and which were precedents for the federal Constitution. This account can be profitably supplemented by SCHOUER, JAMES, *Constitutional Studies*, pp. 29-69, where the treatment of Revolutionary Bills of Rights and their effect on the ratification of the federal Constitution is clear and interesting. Invaluable as the foundation for a clear understanding of the political theory of the period is the scholarly delineation in MERRIAM, C. E., *American Political Theories*, pp. 38-96, which should be supplemented by FORD, H. J., *Rise and Growth of American Politics*, pp. 17-33, for an accurate description of the changes in the Revolutionary movement from allegiance to the king to the outbreak of the war. The best accounts of the evolution of qualifications for suffrage can be obtained in a brief, convenient statement by CLEVELAND, F. A., *Organized Democracy*, pp. 130-150; BEARD, C. A., *American Government and Politics*,¹ pp. 78-81; THORPE, F. N., *Constitutional History of the American People*, pp. 93-97, which has a very interesting table illustrating early limitations by different state constitutions.

It is further suggested that in states which entered the Union prior to 1800, a study of the actual constitutional arrangements of your state will be interesting and valuable. The texts of all state constitutions from the beginning can be found in THORPE, F. N., *American Charters and Constitutions*, published by the United States Government.

Topics:

Bills of Rights.

Governor in the Early State Constitutions.

Lower House in Early State Constitutions.

Upper House in Early State Constitutions.

¹ This work will hereafter be cited simply as BEARD.

CHAPTER III

FORMATION OF THE UNION

DURING the colonial period there were only scattered efforts to bring together the settlements of the Atlantic seaboard in any form of common government. The great stretches of wilderness which separated the colonies from one another made strongly against the spirit of union. Local patriotism was much in evidence, and their common dependence on Great Britain was an obstacle to the recognition of general interests. Furthermore, the mother country regarded with jealousy the idea of a colonial federation which might unduly arouse the spirits of her always unruly children. Over against these influences must be set the common nationality of the colonists and their common dangers from the French and the Indians.

**Forces for
and against
union**

This danger was the occasion for the formation of the first and most effective of the intercolonial unions, the New England Confederation. Its members were the colonies of Massachusetts, Plymouth, Connecticut, and New Haven. The legislature of each colony elected two commissioners to its governing body. They met annually at the capital of each colony in rotation, except that it was Boston's turn every other year. The concurrence of six of the eight commissioners was necessary to any action. The principal business of the Confederation was defense against the Indians, but the commissioners were given power likewise "to frame and establish agreements and orders in general cases of a civil nature, wherein all the plantations are interested for preserving peace amongst

**The New
England
Confeder-
ation**

themselves and preventing as much as may be all occasions of war or difference with others." The Confederation had no means of compelling obedience to its designs, and when, as in the case of the Dutch war, Massachusetts, which was larger than all the rest of the members put together, refused to coöperate, there was no possibility of coercing her. The Confederation was active and useful from its foundation in 1643 to the absorption of New Haven by Connecticut. After that it languished, except that it revived temporarily for its greatest achievement, the successful conduct of King Philip's War. With the abrogation of the charter of Massachusetts in 1684, it passed out of existence.

In the years which intervened before the breaking out of the quarrel between the colonists and the mother country over the Stamp Act, there were numerous conferences or conventions of the colonies on Indian affairs. In a few instances there was concerted action taken by several colonies against the French and their dusky allies. Nothing, however, like a permanent union was created for any purpose. Several interesting proposals were put forward by men interested in the colonies, — notably Penn in 1698 and Davenant in 1701, — but they never got beyond the stage of speculation.

The Albany
Congress
and its plan
of union

One of the colonial congresses deserves particular attention, that held at Albany in 1754, at the suggestion of the British Lords of Trade. It was attended by the delegates of seven colonies, many of the most distinguished men in America, among them Benjamin Franklin. This great statesman, who had long advocated the union of the colonies, had ready a plan of union which was adopted by the congress. There was to be a "president-general" appointed by the crown, and a "great council" to be chosen by the representatives of the people of the

several colonies in their respective assemblies. Representation in the great council was to be based on the contributions of each colony to the general treasury. The acts of the great council were to be subject to veto by the president-general. The functions of the government thus organized were to be the conduct of Indian affairs, the government of new settlements until they had been made colonies by the king, the support of an army, the maintenance of forts, and for these purposes the laying of general "duties, imposts, or taxes." This plan was regarded with suspicion both in this country and in England, so that nothing came of it. Its only real significance lies in the fact that it was the work of a man who was to take a prominent part in the actual formation of the American Union.

It was only when the long-smoldering controversy with the mother country over the right of Parliament to tax the colonies broke into flame, that the colonists seem for the first time to have become conscious of a need for a union. The Stamp Act Congress was an expression of this growing feeling. It only meant, however, that the men of Massachusetts and South Carolina were ready to get together to protest against a common grievance. United action was still far off. As the pre-Revolutionary debate waxed hotter, the Whig or Patriot party found it necessary to organize first local and then intercolonial committees of correspondence. This political machine created the habit of common action among the members of the dominant party in all the colonies. The way was well paved, therefore, for the first Continental Congress, in 1774, in which all the colonies except Georgia participated. It did nothing but protest and call for a second Congress to be held the succeeding year. Before this body assembled, war had begun.

The pre-
Revolution-
ary con-
gresses

The Continental Congress

It was immediately necessary for the Congress to assume the widest kind of revolutionary powers. It raised an army, conducted foreign relations, printed paper money, negotiated loans, and ultimately declared the independence of the thirteen states. There was no limit to its power except the necessities of the situation. It was, however, a most irregularly constituted body. Its members were not chosen by any legal authority, but by a variety of conventions, mass meetings, and committees. It was a party, not a national organ. It was thought to be imperative that some regular and orderly basis should be given to the government of the new nation. The first step in this direction was the advice given to the states in May, 1776, to "adopt governments." The second was the appointment of a committee on June 11, 1776, to draw up articles of confederation. It was not, however, until November, 1777, that the Articles of Confederation were actually approved by Congress. Though they provided that they should be of effect only after ratification by all the states, a consummation not reached until 1781, they were practically put in force from the date of their approval by Congress.

The Articles of Confederation

There can be no more conclusive proof of the impossibility of making forms of government permanent by declaring them to be unchangeable than the brief and stormy history of the "Articles of Confederation and Perpetual Union." They were pronounced to be unamendable except by the consent of all the states, but after a single decade they were cast aside without even that formality. Under them all the powers of the central government continued to be exercised by Congress. In this body each state was entitled to not more than seven, nor less than two, representatives. Each state, however, was entitled to one vote only, the delegation from the

state determining how that vote should be cast. In case of tie, the vote was lost. Representatives were to be elected "in such manner as the legislature of each state shall determine," which meant in practice that they were chosen by the state legislatures. They were subject to recall by the state which sent them, and habitually depended on instructions from the home legislature as to how they should cast their votes on important questions. They were paid whatever the discretion or generosity of their states suggested. Congress elected a presiding officer called the "president," but no person could hold that office more than one year in three. There was no intention of permitting another kind of king to be smuggled in upon them in the guise of a president. There was no executive department, and indeed little need of one, because Congress had small power to do anything but recommend action to the states. Such business as there was of an executive sort was carried on by Congress itself through committees. To guard against the possibility of anarchy while Congress was not in session, there was created a committee of states, one member from each state, which could do anything in the interim which might be done by a simple majority in Congress.

The powers of Congress at first glance appear rather ample. They included the power of making peace or war, and conducting foreign relations, regulating the alloy and value of coin and coining money, building and maintaining a navy, appointing all military officers above the rank of colonel, borrowing money, and emitting bills of credit. Experience, on the contrary, showed three great weaknesses:

The powers
of the Con-
gress of the
Confedera-
tion

1. The states might regulate commerce to suit themselves, which resulted in silly and wasteful efforts on the part of the states to profit at one another's expense and

prevented the Congress from making effective commercial treaties with foreign countries.

2. Congress could not pass laws and enforce them against individuals. It could only direct its commands to the states, and as there was no possibility of coercing a state, if it desired to nullify the laws of Congress it could do so. Congress might, for example, ask each state for a certain number of soldiers, but if the states neglected to furnish them, as they generally did, Congress was helpless.

3. Congress had no power of taxation. It could only apportion to each state its share of the expenses and wait for the state to respond. So remiss were the states in this regard that without the aid of foreign loans the Revolution would have been a failure. After the war was over the revenues of Congress sank to the absurd level of about \$500,000 a year.

**The critical
period**

The years which succeeded the Revolution saw a great deal of misery and consequent discontent, to which we have already referred. The disorders of the time led men to desire some authority strong enough to cope with any disturbance, and to guarantee the stability of government throughout the country. The struggles of New York and New Jersey, to take a typical example, for the trade of New York Bay, caused thinking men to see the necessity of a common regulation of commerce. It was essential to the honor of the new nation that it be given revenue to pay its debts. It was necessary to its continued independence that it have adequate means of defense. All attempts, however, to amend the Articles of Confederation were unavailing.

At this juncture a curious train of circumstances was set in motion by the dispute of Maryland and Virginia over the navigation of the Potomac. The commissioners appointed to settle this dispute recommended the ap-

pointment of a new commission to prepare a tariff schedule to be enforced by both states. Virginia, thereupon, issued a call for a convention at Annapolis to consider the extension of the powers of the Confederation with regard to commerce. This convention, which met in 1786, was attended by delegates from only five states. Instead of waiting for others who were on the way, they adjourned after adopting a resolution calling upon Congress to summon delegates from all the states to a convention to be held in Philadelphia in the spring of 1787 for the purpose of amending the Articles of Confederation generally. Congress responded to this suggestion, and in May, 1787, the most important assembly in the history of our country began its deliberations.

It was for a long time the custom for all writers on our history and politics to laud without reserve the ability and motives of the men who framed the Constitution. More recently there has been a tendency to depreciate their work and to ascribe to them the desire to deceive the people into surrendering the right of direct self-government. As a matter of fact, the men who gathered in Philadelphia for the purpose of amending the Articles of Confederation were better fitted for such a task than any similar body that has ever assembled. Most of them had had the advantage of experience in public affairs, and they all approached the problem before them in a practical spirit. Their problem was to erect a stable central government, at the same time preserving in as large a measure as possible the independence of the states. They simply took old and well-tried governmental mechanisms and adapted them, with a minimum of change, to the new situation. In view of the numerous efforts of constitution makers in other countries which have failed, they deserve the highest credit for giving us at the first

**The Constitutional
Convention
of 1787**

attempt a workable government. There was one piece of construction in the edifice which they reared which was of marked originality — the fact that the federal government acted directly on the citizen. Every power of law-making given to the government of the Union carried with it a corresponding executive and judicial power. Within the sphere marked out for it the federal government was a complete working government. It could recruit its own army and lay its own taxes. This was a new thing in federations, and it made all the difference between the failure of the Articles of Confederation and the success of the Constitution.

The Constitutional Convention and democracy

We have already seen that the perils of the critical period and the inefficient manner with which somewhat democratic state governments dealt with them had led to a conservative reaction. The framers of the Constitution belonged to the well-to-do class, whose pocketbooks and opinions had been adversely affected by the pro-debtor laws of legislatures and the violence of hungry mobs. They were determined to steer clear of what they considered to be the evil of the state constitutions, a too ready response to passing popular feeling. They therefore created what has since come to be known as the "system of checks and balances." They gave the executive department into the keeping of the President, elected indirectly by the people every four years; the legislative to a House of Representatives elected by the people every two years, and to a Senate, the members of which were elected by the state legislatures for six years; the judiciary to judges appointed for life and removable only by the very difficult process of impeachment. The President checked the legislature by the veto which was given him, over its laws; the legislature checked the President by its control over appropriations and by the share

given the Senate in making treaties and appointments. The courts checked both the other departments by their ability to treat as null and void any action contrary to law or the Constitution. The result of this arrangement was the desired one of stability. The people under it could have their own way, but only after a lapse of time sufficiently long to affect all these numerous interlocking authorities. There can be no denying that this violated the principle of popular rule. On the other hand, it is clear that it was absolutely necessary at that time to have a stable central government. If it had not been established, there would probably be no United States today. If in the course of our social development the system which they established has since become an obstacle to good government, it should not be permitted to diminish the honor in which we hold them. It is wrong to judge the government of yesterday by the standard of today.

The framers of the Constitution with admirable boldness abandoned at the very beginning the notion of amending the Articles of Confederation. They made a wholly new instrument, and when their labors were over, submitted it to Congress with the suggestion that it should go into effect when ratified by conventions called for the purpose in the nine states. Congress submitted it to the states, and on June 21, 1788, when New Hampshire as the ninth state signified its assent to the new form of government, it went into effect in the nine ratifying states. The others soon joined the union, little Rhode Island last. Elections were held for presidential electors and members of Congress, and the 4th of March, 1789, was set as the date for the inauguration of the new government. Although President Washington was not actually sworn in, on account of the slowness with which

**The making
and ratifica-
tion of the
Constitution**

the members of the new Congress gathered in New York, until somewhat later, the 4th of March has remained the day from which all terms of elective office under the United States are counted.

SUGGESTIONS FOR FURTHER STUDY

The work that has already been begun of the actual study of charters and constitutions should be continued in connection with this chapter: *Articles of Confederation of the United Colonies of New England*, American History Leaflets, No. 7; *Plan of Union, Benjamin Franklin*, American History Leaflets, No. 9; *Exact Text of the Articles of Confederation, with the Franklin and Dickinson Drafts*, American History Leaflets, No. 20; the Constitution of the United States (see Appendix).

Additional descriptive material on the field covered by this chapter may be found in any of the standard histories; for example, CHANNING, EDWARD, *History of the United States*. FROTHINGHAM, *Rise of the Republic*, is an excellent book devoted to the development of the Union. On the New England Confederation, see FISKE, JOHN, *The Beginnings of New England*, pp. 140-198; OSGOOD, H. L., *The English Colonies in the Seventeenth Century*, vol. i, pp. 392-423. On the period following the Revolution see FISKE, JOHN, *The Critical Period of American History*. On the Constitutional Convention, see FARRAND, MAX, *Records of the Federal Constitution* (a vast work) and *The Framing of the Constitution of the United States*; MADISON, JAMES, *Notes* (any edition); BEARD, C. A., *An Economic Interpretation of the Constitution of the United States* and *The Supreme Court and the Constitution*. SMITH, J. ALLEN, *The Spirit of American Government*, deals with the convention as expressing the conservative reaction.

Topics:

- The New England Confederation.
- The Albany Plan of Union.
- The Continental Congress.
- The Articles of Confederation.
- The Critical Period.
- Personnel of the Constitutional Convention.
- Reports of the Convention.
- History of the Convention.
- The Ratification of the Constitution.

CHAPTER IV

THE AMERICAN FEDERAL SYSTEM

WE have already noted one of the fundamental characteristics of the government created by the Constitution of the United States; namely, that it acted directly on the individual citizens of the country. We have seen that this was a new departure in federal government, and was largely responsible for the success of the United States. We must now consider the nature of the union thus created and the precise limits of the powers of the United States and of the several states.

The first step in this process is the appreciation of the significance of the provision, "This Constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the constitution or laws of any state to the contrary notwithstanding."¹ It is further declared that the judicial power of the United States shall extend among other things to all cases arising under the Constitution and laws of the United States, and treaties made under their authority. This does not mean that the decision of every case involving the Constitution of the United States will come up in the United States courts. It may be settled in the state courts if the action in which the constitutional question arises begins there. The Judiciary Act, however, which was one of the first acts passed by the first Congress, provided that a case involving the Constitution or laws of the United States

The Constitution the supreme law of the land

¹ Article VI, Section 1, Clause 2.

might be appealed from the decision of the highest state court to the Supreme Court of the United States, if the decision of the state court had been against the applicability of the Constitution or law of the United States. Since 1914 such an appeal is permitted even when the decision of the State Court is favorable to the Constitution or law of the United States. Each state, therefore, has its own law and its own courts. The United States has its own law and courts. When, however, the United States law—including, of course, the Constitution—comes into conflict with the state law, the former must prevail, and to insure its prevailing, the Constitution has given the last word in such matters to the Supreme Court of the United States.

The specified and implied powers of Congress

We must next get clearly in our minds that the United States is a government of specified powers. The Constitution conferred on the Congress only certain enumerated powers. Furthermore, the people of the several states, fearing the assumption of additional authority by the central government, demanded the adoption of the Tenth Amendment¹ to the Constitution, which provides that "the powers not delegated to the United States by the Constitution nor prohibited by it to the states, are reserved to the states, respectively, or to the people." There are, however, certain powers which may be fairly implied from those otherwise granted. Congress has power "to make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all the other powers vested by this Constitution in the government of the United States, or in any department or officer thereof."² From the very

¹ The process of amendment is sufficiently described in the Constitution itself. So far all amendments have originated in resolutions passed by a two-thirds majority in each house of Congress. The several amendments are discussed in their appropriate connections.

² Article I, Section 8, Clause 18.



View of the dome of the national Capitol at Washington, from Pennsylvania Avenue.

beginning there were disputes as to what powers should be considered "necessary and proper."

The first important controversy of this sort arose over Hamilton's proposition to create a national bank. Jefferson held that there was no warrant in the Constitution for the creation of such a bank; that a bank was not necessary to the collection of taxes, the borrowing of money, or any of the other functions of the United States, as defined in the Constitution. Hamilton, on the other hand, contended that if no power could be exercised under Clause 18 except one which was necessary in the sense of being the only available alternative, no powers could ever be exercised under it. Congress would, he said, be unable, if Jefferson's view prevailed, to choose between different means of carrying out the power specifically granted, and therefore the whole system of government would be greatly hampered. Washington accepted Hamilton's reasoning and the Bank of the United States was created.

**Hamilton
and
Jefferson**

The theory of implied powers was definitely settled in the famous case of *McCulloch vs. Maryland*, decided by Chief Justice Marshall in 1819.¹ He adopted Hamilton's view. While there have since been many questions as to whether a particular measure of Congress was justified under the doctrine of implied powers, the doctrine itself is settled. To all intents and purposes it amounts to this: change the "and" in "necessary and proper" to "or," so that the Constitution reads "necessary or proper." Under this clause thus interpreted Congress has been exercising wider and wider powers.

**McCulloch
vs. Maryland**

Congress was given power "to lay and collect taxes, duties, imposts, and excises," to borrow money, to coin money, and regulate its value. The states are forbidden

¹ 4 Wheaton 415.

The financial powers of Congress

to levy any duties on imports or exports, so that the power of Congress over this method of raising revenues is exclusive. Other methods of taxation may be employed by both the United States and the states.¹ Congress, on the other hand, is forbidden to lay direct taxes except in proportion to the population of the states. This makes it very difficult to lay fair direct taxes, and except in time of war the United States has not resorted to this method of raising revenue. The Supreme Court in 1893 held an income tax to be a direct tax. As such a tax could not be apportioned according to population, the sixteenth amendment was required to give Congress power to use this source of revenue.

The commercial power of Congress

Congress is given by the Constitution the power to regulate commerce, both interstate and foreign, and that with the Indian tribes. This power has actually turned out to be the most expansive of all the powers of the federal government. In 1787 foreign commerce was conducted in sailing vessels and was of very limited extent. It required five or six weeks to cross the Atlantic. The objects of commerce were limited to a few raw products of America and simple manufactured goods of Europe. Today swift ships have annihilated ocean distances and the objects of foreign commerce have become of such enormous extent and variety as to stun the imagination. Interstate commerce was in 1787 almost negligible, except such border commerce as might take place between two neighboring states, the settled portions of which were close together. It required five or six days to make the trip by land from New York to Boston. The journey was not unattended by peril, and few passengers undertook it. Goods could be transported overland only by wagon, at great risk and expense. What interstate

¹ A general discussion of this subject will be found in later chapters.

commerce there was, was carried on in coasting schooners, and was at best slow and expensive. With the development of canals, railways, telegraphs, telephones, parcel post, and rural free delivery, all this has changed. Practically every important product manufactured in or imported into the United States is a subject of interstate commerce. The Western cowboy who seeks to provide himself with a broad-brimmed "Stetson" will find on inspection that it is manufactured in New York. The high boots he buys bear the mark of a Brockton, Massachusetts, manufacturer. His riding gloves are manufactured of Brazilian hide in Gloversville, New York. The pistol which he sticks in his belt is a product of New Haven. From head to heel he is the beneficiary or victim of interstate commerce.

The result is that the power of Congress to regulate interstate and foreign commerce has become relatively far more important than it was in 1787. Further, because practically all products are subjects of interstate commerce, Congress has been able, under the guise of "interstate regulation," to enter the general field of social legislation. The pure food laws of Congress apply only to the articles of interstate commerce, but that means to practically all articles. The child-labor laws proposed in Congress would apply only to factories producing goods for interstate commerce, but that is a large proportion of all factories. The power of Congress to regulate the rates of railroads engaged in interstate commerce has been extended to include a considerable degree of regulation of the intrastate business of those roads. Whenever a power is exercised by Congress under the interstate commerce clause of the Constitution, it wipes out all conflicting powers of every state. The power of regulating interstate commerce, to sum it all up, has

**Effects of
power of
Congress
over inter-
state and
foreign
commerce**

been the greatest means of congressional encroachment upon the powers originally left to the states.

Miscellaneous
powers

The military power of the United States is very extensive. Congress is given the power to declare war, to raise and support armies, to provide and maintain the navy, to make rules for the land and naval forces, to provide for calling out the militia of the several states, and for uniform regulations concerning the organizing, arming, and disciplining of the militia. Congress has the power to establish post offices and post roads, to encourage science and letters by granting patents and copyrights. It has the power also to establish a uniform rule of naturalization and uniform laws on the subject of bankruptcy.¹

Limitations
on powers of
Congress

The Constitution specified certain limitations on the powers of Congress. The first of these, concerning the slave trade, has long since been obsolete. Congress is forbidden to suspend the privilege of the writ of habeas corpus, except "when in case of rebellion or invasion, the public safety may require it." As a matter of fact, the privilege of the writ was suspended during the Civil War by President Lincoln, Congress afterwards ratifying his action. Another prohibition relates to the passage of bills of attainder, a species of legislation by which men were judged guilty of offenses and as a punishment deprived of life, liberty, or property. Ex post facto laws, or laws making criminal, acts which were not criminal at the time of their commission, were forbidden. Under this section no taxes or duties may be laid on articles exported from any state, or preference given to the ports of one state over those of another. This latter

¹ When there is no federal law on the subject of bankruptcy, state laws govern. At the present time a federal Bankruptcy Act passed in 1898 is in effect.

clause helps to preserve the equality of the states. Titles of nobility may not be granted by Congress, nor can any officer of the United States receive an office or title or gift of any kind from a foreign prince or state without the consent of Congress.

Further restrictions on the powers of Congress are to be found in the first ten amendments, which were proposed by the first session of Congress and ratified by the states in 1791. These articles constitute what is known as the Bill of Rights, and they correspond very closely to the bills of rights of the early state constitutions which we have already mentioned.

The Bill of Rights

Hamilton argued against their necessity on the ground that the government of the United States, being one of specified powers, could never be guilty of the particular acts of oppression forbidden. The people, however, were not satisfied, and in several states they made the adoption of some such provisions as these the condition of ratifying the Constitution. It is not necessary at this point to discuss in detail the effect of these amendments. Similar limitations have been placed in practically all of our state constitutions, and since the states come much more into contact with the individual citizen, it will be more appropriate to examine them in connection with the power of the state legislatures.

Section 10 of Article I of the Constitution forbids the states to have any relations with foreign countries, or with one another. They cannot enter into treaties, alliances, or confederations. In this respect they differ from the states of the German Empire and Switzerland, which may make treaties with one another and under certain circumstances with foreign countries. The states were also forbidden to keep troops or ships of war in time of peace, or to engage in war unless actually invaded,

Limitations on the states

or in such imminent danger as will not admit of delay, except by the consent of Congress.¹ These provisions taken together eliminated the possibility of any state acting in a relation outside of the Union. The states were furthermore forbidden to coin money, issue paper money, or make anything but gold and silver legal tender in payment of debts, thus preventing for the future the wild financial legislation which had so disturbed the period before the adoption of the Constitution. Like Congress, the state legislatures were denied the power of passing bills of attainder, ex post facto laws, and, slipping along unobtrusively near the end of the clause, "all laws impairing the obligation of contracts." This provision was intended to add still another protection to the creditor class which had sometimes suffered through early state legislation. In the famous case of *Dartmouth College vs. Woodward*, Chief Justice Marshall decided that a law repealing the charter of a corporation was in violation of this provision of the Constitution. The effect of this decision has been far more extensive than Chief Justice Marshall could have imagined. In his day there were few corporations. During the last century, however, they have become the typical form of American business organization, and Marshall's interpretation of this clause helped to place them beyond the control of the law until the legislatures learned to introduce saving clauses into all charters.²

The most important limitations on the power of the states are those imposed by the Thirteenth, Fourteenth,

¹ Modified as to militia by amendment.

² The states were, as we have seen, forbidden to lay duties on imports or exports except such duties as they might lay in connection with their inspection law. It has never been the practice of our states to avail themselves of this privilege, because all money so raised must be paid into the treasury of the United States.

and Fifteenth amendments, which were adopted as a result of the Civil War. The Thirteenth Amendment simply forbids slavery throughout the territory of the United States. The Fifteenth Amendment provides that no citizen of the United States shall be denied the right to vote on account of race, color, or previous condition of servitude. While these were severe limitations on the power of the individual states, as they had enjoyed it up to that time, they are simple enough to be understood without particular comment. The Fourteenth Amendment defines the term "citizen" of the United States, and then forbids the states to deprive any person of life, liberty, or property without due process of law. In most of the state constitutions there were already similar limitations on the state governments. The significant thing about the inclusion of this language in the Fourteenth Amendment is that it gives to the United States courts the power to hold unconstitutional any law or constitutional provision of any state in violation of the terms of the amendment.¹

The Thirteenth, Fourteenth, and Fifteenth amendments

The framers of the Constitution gave little heed to the nature of the union they were creating. In so far as they considered the question at all, they probably thought they were dividing sovereignty between the states and the United States. It was not until an issue of sectional character arose that the subject came to be seriously discussed.

Nature of the union

Early in the administration of John Adams, as a result of the bitterness of party strife growing out of our relations with France, the Federalist Congress passed the Alien and Sedition Acts. They led to the famous Virginia and Kentucky Resolutions, which set forth the view that

Doctrine of nullification

¹ The other aspects of the Fourteenth Amendment are discussed in a later chapter.

an act of Congress in excess of its powers might be declared to be of no effect by the legislature of any state. The Federalists, on the other hand, contended that the Constitution provided the Supreme Court as the sole instrument for limiting the unconstitutional activity of Congress. The repeal of the Alien and Sedition Laws temporarily allayed this difficulty. It broke out again, however, at the time of the War of 1812, to which the New England states were bitterly opposed. Being in the minority, they saw no hope of help from Congress. It is not surprising, therefore, that at the famous Hartford Convention delegates from the New England states should have adopted resolutions declaring the right of the individual states to nullify acts of Congress. The doctrine was next brought forward by the people of South Carolina in 1830. They found themselves suffering from economic depression which they ascribed to the tariff of 1828. Being in the minority, they sought redress by nullifying the tariff within their borders. The introduction into Congress of a compromise tariff afforded a momentary escape from the issue.

The theory
of John C.
Calhoun

John C. Calhoun was the greatest exponent of the "states rights" theory of the Constitution. He defended first the right of nullification, and later that of secession. While he never advocated the latter, his arguments as to its constitutional justifiability had a great deal to do with the willingness of the Southern states to take the step in 1861. It must be remembered that the Southern states, primarily interested in agriculture, found themselves increasingly outnumbered in the councils of the nation. They were thus forced to fall back upon some doctrine that would give to the individual states a veto upon the hostile policy of the central government. This doctrine Calhoun put into the clearest and most

systematic shape. He argued strongly against the tyranny of the majority. "All constitutional governments," he said, "take the sense of the minority by its parts, each through its appropriate organ." He further contended that each interest or portion of the minority should have a negative on the others. Applying this to the American constitutional system, he advocated the doctrine of nullification. Calhoun further stated very emphatically that in its very nature sovereignty, or supreme power, is indivisible, and that there cannot be two sovereign authorities in the same state. The states, he argued, had been originally sovereign, and had never yielded any of their sovereignty. The central government was simply an agency created by the states for the purpose of exercising certain powers. The sovereign states which created this agency might at any time withdraw from it.

The nationalist theory of the union found a champion in Daniel Webster. He took the language of the preamble of the Constitution itself, which declares, "We, the people of the United States, . . . do ordain and establish this Constitution for the United States of America," and contended that this meant the people of the whole union, and not of the individual states. According to this theory the Constitution was not formed by the sovereign states, but was an organic union created by a higher authority, the people of all the states. Abraham Lincoln, and later the United States Supreme Court in the case of *Texas vs. White*, took the view that the states had never been sovereign because before they had come out from under the sovereignty of Great Britain they had already been subject to the sovereign power of Congress. This may be true so far as the Continental Congress is concerned. It was, however, not true under

The nationalist theory of the union

the Articles of Confederation, which was clearly a union of sovereign states.

The Constitution, however, actually did create a system which was incompatible with the state sovereignty. The power of the Supreme Court, frequently exercised, to hold state statutes unconstitutional, was quite inconsistent with the theory of Calhoun. Early in the history of the Constitution certain states, notably Pennsylvania and Virginia, attempted to pass laws to prevent the exercise of the judicial power of the United States within their limits, Virginia even going so far as to forbid her citizens to avail themselves of the privileges of the United States courts. The Supreme Court of the United States, however, successfully asserted its power. Under the terms of the Judiciary Act to which we have referred, it successfully removed cases from the courts of Virginia and decided them itself. The whole matter was settled by the Civil War, and while writers still spin some pretty fine theories as to just where sovereignty is located in the United States, it is certain that it is not located in the states. We have, as the Supreme Court said in *Texas vs. White*, "an indestructible union of indestructible states."¹

SUGGESTIONS FOR FURTHER STUDY

The best book dealing in fairly simple terms with the subject of this chapter is WILLOUGHBY, W. W., *The American Constitutional System*. Reference may be made to BEARD, chs. viii and xiii.

¹ It may be convenient to adopt the distinction between "political sovereignty" and "legal sovereignty." The former, which means the ultimate source of authority in the state, is possessed by the people of the United States. "Legal sovereignty," which is defined as the power of lawmaking without legal limit, rests with that authority which could amend freely the Constitution of the United States. This authority is either two thirds of both houses of Congress and the legislatures of three fourths of the states, or the legislatures of three fourths of the states alone,—two thirds of the state legislatures being able to force Congress to propose an amendment.

MERRIAM, C. E., *American Political Theories*, pp. 252-304, gives a good account of the theories of Calhoun and his opponents. The words of Calhoun himself may be found in his *Disquisition on Government* and *Discourse on the Constitution and Government of the United States*. (See vol. i of CRALLE's edition of his works.) WEBSTER'S *Reply to Calhoun* appears in his works, vol. iv, pp. 500-522. The Southern attitude is also clearly expressed in STEPHENS, ALEXANDER H., *A Constitutional View of the War between the States*. The view of BURGESS, J. W., one of our greatest political thinkers, is found in his *Political Science and Constitutional Law*, vol. i, pp. 104-108. The Virginia and Kentucky Resolutions and the South Carolina Ordinances of Nullification and Secession are interesting exhibits in this connection. They may be found in MACDONALD, W., *Select Documents Illustrative of the History of the United States*, pp. 148-160, 268-271, and 441-442.

The opinions of Jefferson and Hamilton on the constitutionality of a national bank may be found in MACDONALD, *Select Documents*, pp. 76-98.

For the use of teachers the following cases decided by the United States Supreme Court are cited. They may all be found in such collections of cases on constitutional law as that of J. B. Thayer.

Power of United States finally to apply United States Constitution and laws as against conflicting state constitutions and laws: *United States vs. Peters*, 5 Cranch 115; *Fletcher vs. Peek*, 6 Cranch 86; *McCulloch vs. Maryland*, 4 Wheaton 316; *Martin vs. Hunter's Lessee*, 1 Wheaton 304; *Cohens vs. Virginia*, 6 Wheaton 264.

Doctrine of implied powers: *United States vs. Fisher*, 2 Cranch 358; *McCulloch vs. Maryland*, 4 Wheaton 316.

Interstate Commerce: *Gibbons vs. Ogden*, 9 Wheaton 1; *License Cases*, 5 Howard 504; *Passenger Cases*, 7 Howard 283; *Bowman vs. Ry. Co.*, 125 U. S. 465.

The use of good treatises on constitutional law, such as those of Willoughby, Story, Cooley, and others, is recommended.

This chapter should be made the occasion of a thorough drill on the Constitution of the United States. Students may be asked to report in writing on topics like the following:

Topics:

Doctrine of Implied Powers.

Taxing Power of Congress (see Chapter XXXI).

Commerce Power of Congress.

Military Power of Congress.

Limitations on the Power of Congress.

The Bill of Rights.

Limitations on the States.

Limitations on the States by the Fourteenth Amendment.

Power of the Courts.

The Webster, Calhoun, and Supreme Court theories of the union
may be each assigned to a student to report on.

PART II

PARTIES AND ELECTIONS



CHAPTER V

THE PLACE OF POLITICAL PARTIES IN MODERN GOVERNMENT

GEORGE WASHINGTON in his Farewell Address solemnly warned his countrymen against the dangers of partisanship. There are still many persons who profess to see in the activity of political parties the cause of much of the misgovernment which troubles our country today. There has been a good deal in the history of parties before and since the days of Washington to justify these views. Before Washington's time, parties had frequently signalized their victories by banishing their opponents and confiscating their property. The victories themselves had been won by violence or fraud, and out of the disturbed conditions produced by party struggles there had usually come some bold spirit to make himself master on the ruins of popular liberty. Since the time of Washington we have had many corrupt political parties, and while banishments and confiscations no longer take place, the so-called "spoils" of office and the opportunities for personal profit from public enterprises have furnished a stimulus for selfish men to be active in their affairs.

The bad
side of polit-
ical parties

Political parties, however, are absolutely necessary in the conduct of modern government. In the first place, they are unavoidable. Men always have differed and always will differ in their opinions with regard to public questions. Interest, prejudice, ignorance, and even virtue and public spirit help to make it impossible for all men to agree. Our fur-clad ancestors, clustering around the council fire and falling into dispute over the division of

Political
parties un-
avoidable

the spoils taken from the enemy, were laying the foundation of the modern political party; for there is not only a tendency for men to differ, but there is a tendency for men to agree, and to fall into groups for the purpose of giving greater effect to their opinions. It would be no easier or harder to abolish political parties than to abolish the wind or the tide.

Political
parties nec-
essary in a
democracy

One of the great critics of democracy, Sir Henry Sumner Maine, asked this very pertinent question: "How can a democracy make up its mind?" It obviously cannot make up its mind like an individual. It is incapable of originating any idea. It can only approve or disapprove of the ideas suggested to it by individuals. If President Wilson says, "Let us lower the tariff," the people may, by electing him to office, express their approval of this policy. They could not, however, have originated it apart from the suggestion of some individual. If a democracy is to work at all, there must be some mechanism by which it may express its approval or disapproval of men or measures. This might be done in the case of questions of policy, by submitting them directly to popular vote, but, as we shall see, this method cannot be applied except to a comparatively few matters. It does not at all solve the problem of the election of officers agreeable to the people, for the purpose of carrying on the government. To do this, political parties are necessary.

Evolution
of the
two-party
system

Elihu Root, in his little book called *The Citizen's Part in Government*, suggests a very fine illustration of the truth of the last statement. Let us suppose that in your state there were no political parties and that each voter went to the polls and voted simply for the man of all men in the state whom he considered best fitted to be governor. It is clear that the number of persons voted for would be very large. Even if, by some chance, one candidate

had received a plurality, — that is, more votes than any other single candidate, — his vote would still be microscopically small in proportion to the total number of votes cast. It is probable that the great majority of citizens would have preferred some one else to the man elected under this system. It would be impossible for him to claim that he represented the people and there would be no assurance that his policies would meet with their approval. In other words, the very purpose of democracy would have been defeated. Now one way that such a result can be avoided is by those persons who hold views in common clubbing together to support a particular candidate pledged to their views. As soon as that is done, we have a political party. To carry on our illustration, before the next election, men interested in certain lines of business or holding certain opinions as to how the state should be run, would get together and determine upon the person to whom their votes for governor should go. Naturally a candidate of some one of these groups would be elected. The third election would see group merging with group; men giving up some part of their opinions for the sake of more nearly getting those things which they deem essential. This process would go on until there were only two political parties. When this stage of development has been reached, a candidate of one of the parties may express the general ideas of a majority of the people. Therefore we may say that not only are parties necessary to the operation of a democratic government, but that, for English-speaking countries at any rate, there will be normally but two great political parties.¹

¹ It is only in Anglo-Saxon countries that the two-party system exists. The difficulties, however, which are experienced on the continent of Europe, where parties are numerous, help to establish the rule laid down in the text.

**Exceptions
to the two-
party rule**

This does not mean that there are no other parties. There are at all times comparatively small groups of persons holding particular views which they consider to be of primary importance, who will not unite with either of the great political parties. There have been a succession of such parties in the United States: The Anti-Masonic party of the thirties; the Know-nothing or Anti-Foreign party of the early fifties; the Greenback party, the Populist party, and the Prohibition party of more recent times. Another party not yet entitled to be called one of the great political parties, but of enormous influence in the United States, is the Socialist party. At certain times the old parties tend to break up and new organizations take their place. It is then not unusual to find for a brief space more than two parties fairly evenly dividing the sentiment of the country. In the period when the new Republican party in the presidential election of 1856 was forming, there were three parties: Democrats, Whigs, and Republicans. In 1860 there were four parties: Republicans, the Union Party of Bell and Everett, and Northern and Southern Democrats. In the election of 1912 three parties contested on something like even terms for the presidency: Democrats, Republicans, and Progressives. The tendency, however, is to get back pretty promptly to the two-party basis. The new party either absorbs the old, as the Republicans absorbed the Northern Whigs, or is itself absorbed by one of the old parties.

If parties are, as we have seen, unavoidable and indispensable, no matter what defects may appear in their operation, they cannot of themselves be regarded as either good or bad. They are to be looked upon as is any other necessary mechanism of government, a legislature, for example. If they seem to be turning out bad results, the proper course is to endeavor to discover and remove

the cause of the evil, and not to rail at the institution itself. It would seem to be preferable, then, for a public-spirited citizen to become a member of a political party and by his active participation in it help to prevent abuses.

The citizen's
obligations
toward
parties

In joining a political party, a good citizen should be willing to give up some of his opinions for the sake of coöperating with others in securing the adoption of his general ideas. The person who will never yield a jot of his views is doomed to be frequently disappointed from the lack of disposition on the part of the rest of mankind to conform to his opinions. If, as we have seen, the two-party system is normally necessary to secure the decisive expression of the popular will, there must be a good deal of holding back of individual views for the sake of agreement upon substantials. No citizen, however, should continue to vote for a party when that party has ceased to represent him on matters which he considers to be of vital importance. One of the chief reasons for the corruption that has existed in political parties has been the knowledge of the party leaders that the party followers would vote the ticket no matter who was nominated. It is natural for men who have been associated in a party to set up the party as their ideal instead of the things the party was intended to bring to pass. Thus a party organization has a tremendous momentum which keeps it going long after the original motive forces have ceased to operate. Every citizen should try to do his part to keep parties genuine and to hold them true to principle. Parties are the means and not the end of political activity. The man who supports his party, right or wrong, is a traitor to his country.

SUGGESTIONS FOR FURTHER STUDY

There is very little material available on the subject of this chapter. It is mostly scattered in fragments too minute for reference work. The views of the writer are more fully set forth in his *Government for the People*,¹ pp. 28-48. ROOT, ELIHU, *The Citizen's Part in Government*, pp. 32-92, discusses the relation of the individual to party, as do HUGHES, C. E., *Conditions of Progress in Democratic Government*, and BRYCE, JAMES, *Hindrances to Good Citizenship*, pp. 75-104. MACY, JESSE, *Political Parties in the United States*, pp. 1-22, and RAY, P. O., *Introduction to Political Parties and Practical Politics*,² pp. 3-14, cover much the same ground as this chapter. JONES, C. L., *Readings on Parties and Elections*, pp. 28-37, gives extracts from Madison and Washington, showing early fear of parties. WILSON, WOODROW, *Constitutional Government in the United States*, pp. 203 ff., shows how inevitable parties are in this country.

For teachers' material consult also LOWELL, A. L., *Government of England*, vol. i, pp. 435-447; MAINE, SIR HENRY SUMNER, *Popular Government* (essay on the Nature of Democracy); BRYCE, JAMES, *American Commonwealth*,³ chs. lxxvi-lxxxvii.

Topics:

A debate or discussion on the question, "*Resolved*, That each new voter should ally himself with a political party," will serve to fix the point of this chapter in the minds of the students.

¹ Hereafter cited as REED.

² Hereafter cited as RAY.

³ Hereafter cited as BRYCE.

CHAPTER VI

THE HISTORY OF POLITICAL PARTIES IN THE UNITED STATES

THE history of political parties in the United States begins in those differences with regard to matters of trade regulation and taxation which soon after the middle of the eighteenth century began to vex the relations between England and her North American colonies. The basis of party division was the question as to whether loyalty to king or loyalty to country should come first. Those who held the former view were largely the well-to-do people of the colonies; those who adhered to the latter were of smaller wealth and less exalted station. The division was essentially like that which existed in England at the same time between the Tories, or prerogative men, who were partisans of the crown, and the Whigs, who asserted against the crown the various limitations of the British constitution. The names of these parties were brought over to America and applied to their colonial counterparts.

**Colonial
political
parties**

The war of the Revolution destroyed the Tories as a party. It was not long, however, before the people began again to divide into parties, upon a similar basis. There were two main divisions of the American people. On the one hand, there was the commercial class of New England and New York, with their natural social and political allies, the aristocratic landowners of the states farther to the south. This class possessed most of the wealth of the country. It was the class of creditors. Their interests demanded peace and order, the collection

**Political
parties and
the adoption
of the Con-
stitution**

of private debts in full, payment of national and state debts, and, in general, conditions under which they might employ their capital to advantage. On the other hand, there were the small farmers and frontiersmen, a class numerically greater. As might be expected, they suffered most keenly from the awful ravages of war. While this class was sure to benefit by orderly conditions under which industry and commerce might again prosper, they felt that it would be only justice to spare them the full payment of their debts and were ready to try any new methods in government or finance that held out any prospect of relief.

The first class wanted above all things a strong government; the latter, a popular government. The early state constitutions, with their concentration of power in the legislature, enabled the popular party to get control of the machinery of state government and adopt a number of radical laws. Despairing of the too popular character of state government, the first class came to demand a strong central government for the federation. The popular party, more nearly satisfied with the existing arrangement, insisted emphatically upon the preservation of the liberties of the states. The Constitution of the United States was, as we have seen, framed almost altogether by members of the aristocratic and wealthy class and it fairly represented their ideal in government. It was ratified largely because many of the popular party preferred an undemocratic constitution to none.

Washington was elected as the first President of the United States by unanimous consent. No sooner, however, had the new government got under way than disagreements along the lines we have just been discussing broke out between Thomas Jefferson, Secretary of State, and Alexander Hamilton, Secretary of the Treasury.

Hamilton represented the aristocratic, commercial class which had framed the Constitution. He was anxious to establish firmly the power of the central government, and to that end sought to interpret broadly the powers given to the central government by the Constitution. Jefferson, on the other hand, was a believer in democracy and favored the power of the states as against the nation. We have already seen how they differed with regard to the creation of a national bank. The breach between Hamilton and Jefferson and between their followers in Congress grew constantly wider. Hamilton's partisans were known as "Federalists," and those of Jefferson as "Republicans." Ultimately Washington was drawn into the controversy and, siding with Hamilton, made his administration completely Federalist. When Washington had made clear his intention finally to bid farewell to public life, a vigorous contest began as to who should be his successor. The prestige of Washington's administration was sufficient to secure the election of the Federalist candidate, John Adams. Republican political ideas, however, were naturally more popular than those of the Federalists, and after the election of Jefferson in 1801 the Federalists gradually passed out of existence. From that time until 1824 there was one dominant national party in the United States.

In the meantime a new movement which was to restore the two-party system had begun on the western frontiers. This was the great democratic movement which introduced universal white male suffrage into practically every state constitution. It came from the West, where conditions made for equality between man and man, and it rapidly spread over the country. These new Democrats were far more radical than Jefferson. They believed that Congress, and especially the congressional caucus which

**The Demo-
cratic and
National
Republican
parties**

named the candidate for President, represented wealth and aristocracy. They conceived the government to be in the grip of the money power. They assailed with bitter fury the gentlemen of family and estate, who were the political leaders for the time being.

The new movement found an adequate chieftain in Andrew Jackson, the victor of New Orleans, or, as he was popularly known, "Old Hickory." Jackson was a man of ignorance, intense prejudices, narrow views. He was, however, a typical product of the frontier. He was brave, vigorous, loyal to his friends, and had unswerving faith in the right and ability of the people to govern themselves. After 1824 the Jackson men assumed the name of "Democrats." They rapidly increased in numbers and in 1828 won an overwhelming victory which placed them in full control of the government. This new party held the then astounding doctrine that a majority of the people had a right to control, immediately, by virtue of the simple fact of that majority. They stood for the same narrow interpretation of the Constitution which had been the underlying principle of the Jeffersonian party. It was in furtherance of this idea that they abolished the Bank of the United States. Their opponents, the more conservative element of the old Republican party, had first united on the basis of hostility to Jackson. They soon, however, crystallized into the National Republican party, which adopted the old Federalist principle of a wide exercise of national powers and the new principle of protection of American industry by high tariff duties.

The Whig
party

In 1834 the Whig party was formed of the National Republicans and a portion of the Southern Democrats who looked askance at Jackson's anti-states-rights views. The party was always divided between a Northern and a Southern Whig and it never possessed any genuine sol-

idity. Its members were divided, not only on states rights and slavery, but on the tariff, the bank, and almost every issue of the day. One must speak very generally indeed to say that it was in any sense the successor of the Federalist party.

From 1836 to 1852 the Whigs and Democrats fought for the control of public offices throughout the country. In the meantime a new issue, on which neither party dared to take a definite stand, became the vital question before the American people. This was the issue of human slavery. The early abolitionists were uncompromising, and, believing that the Constitution was a "covenant with hell," would take no active part in politics. The fact that the Constitution clearly protected slavery within the states prevented abolition from becoming a direct issue between political parties. So far as the anti-slavery movement was political, it was directed against the extension of slavery through the territories. Finally, in 1854, the Northern Whigs, who were opposed to the adoption of the Kansas-Nebraska Bill, definitely separated from the Southern wing of their party and took the name of the "Anti-Nebraska Men," which was soon changed to that of "Republican." The Republican party, which held its first national convention in 1856, kept the old Federalist and National Republican doctrines of a broad construction of the Constitution, and the protective tariff. They added the principle of opposition to the extension of slavery in the territories.

Rise of
slavery
issue

The Republican party triumphed in 1860 through the division of the Democrats, and the secession of the Southern states left it in complete control of the government. The attitude of a portion of the Northern Democrats during the war, and the fact that the bulk of the party came from the seceding states, practically con-

The Repub-
lican party

demned the Democratic party to absence from power until war-time memories had begun to subside. About that time the unfortunate attitude of the Democrats on the money question closed the gates of power to the party for another period. From 1861 to 1913 the Republican party was in constant control of the government, except for the eight years when Grover Cleveland was President. There were only two years of these eight in which the Democrats controlled at once the presidency and both houses of Congress.

The Republicans have remained strictly a sectional party. They have never had any foothold in the Southern states. After the elimination of the negro voter, almost the only Republicans in the South have been the holders of federal offices, or the few who are ambitious to secure them. The party has remained true to its National Republican and Federalist ancestors in continuing to believe in the broad exercise of the powers of the central government. It has stood steadfastly upon the principle of protection. In 1896 it became the party of "sound" money. It gradually came to be controlled by men who represented the economic views of the capitalist class, and who were sometimes not over and above scrupulous in their political methods. This situation produced an inevitable reaction, which reached its climax in the organization of the Progressive party in 1912.

The Pro- gressives

The Progressive party had its origin in a great body of progressive sentiment which was built up within the Republican ranks under the leadership of Theodore Roosevelt, Senator La Follette, and others. It split from the Republican party at the Chicago convention of 1912, because it believed that it had been defrauded by the national committee and the Southern office holders in the convention of its right to nominate Mr. Roosevelt.

The Progressives, at their convention in 1912, nominated Mr. Roosevelt for President and Hiram W. Johnson for Vice-President, and adopted a platform, or "covenant with the people," specifically stating their adherence to a very advanced program. It included the initiative, referendum, and recall, woman suffrage, government regulation of the trusts by an administrative department similar to the present Interstate Commerce Commission, prohibition of child labor and of night work for women, reduction of the tariff, and a wide variety of measures for the betterment of the social condition of the people. It proposed to use all the powers granted by the Constitution, and when these were exhausted to amend the Constitution so as effectively to care for, by national action, those problems which have grown too big for the state.

The Progressive party polled a very large vote in the election of 1912, but before the election of 1916 the party had considerably disintegrated, and upon Mr. Roosevelt's refusal to accept the nomination tendered him in that year, practically passed out of existence as a separate party. The bulk of the Progressives apparently went back to their original Republican allegiance. A large number, however, of the rank and file of the party, especially in California, threw their support to Woodrow Wilson, and were in fact largely responsible for his election.

It is a difficult matter to describe the principles of the reunited Republican party. There are great divergencies of opinion between the old stand-pat Republican leaders, who in 1916 still directed the fortunes of the party, and the great body of Progressive voters who in that year supported the Republican candidate. The more important of the common beliefs uniting the various elements of the party are (1) the wide exercise of the powers of central government; (2) protection; (3) the retention

**The Repub-
lican party
of to-day**

of sovereignty over the Philippine Islands; (4) military preparedness; and (5) a vigorous and determined foreign policy. The party in its 1916 convention committed itself to the cause of woman suffrage, but rather strikingly failed to secure the support of the women voters in the suffrage states. What the attitude of the Republican party toward the great social problems of our country will be, and whether its leadership is to be progressive or reactionary, remain to be determined.

**The Demo-
cratic party**

It is no easier to describe the principles of the Democratic party. The same reason which has kept the Republican party out of the South has made the Democratic party the only party in that section of the country. Men in the South are not Democrats by reason of their political beliefs, but because of their color and social opinions. The Democratic national convention of 1896 was captured by William Jennings Bryan, the leader of a great popular movement originating in the agricultural sections of the country and directed against the dominance of the money power. It aimed, much as the old Jacksonian Democracy had done, to put the government more under the control and at the service of the people. Mr. Bryan proposed the free and unlimited coinage of silver at the then legal ratio of sixteen to one, in the hope that more money in circulation would relieve the distress of the Western and Southern farmers. On this issue he was overwhelmingly defeated in 1896 and 1900. In 1904 the conservative element of the Democratic party again asserted itself, but went down to defeat before the tremendous popularity of Theodore Roosevelt. In 1908 Mr. Bryan was defeated for the third time. In 1912 he once more dominated the Democratic national convention and this time secured the nomination of Woodrow Wilson for the presidency upon a progressive platform.

The progressive wing of the Democratic party, led by President Wilson, has since 1912 accomplished numerous constructive reforms of a social and economic sort, especially in relation to the control of the so-called "trusts," the regulation of the currency, child labor legislation, etc. It therefore attracted in 1916 the support of the workingmen and some of the more thoroughgoing Progressives. There are, however, two conservative elements in the Democratic party, the democracy of the solid South and that of certain of the dominant organizations in some of the Northern cities like New York. President Wilson's policy of watchful waiting in Mexico and his moderate and careful attitude toward the warring nations of Europe stand out in strong distinction to the policy advocated by his Republican critics.

The Socialist party holds that the government should own all the instruments of production and distribution. This does not necessarily mean all property. Most Socialists believe that it would be desirable to permit persons to accumulate private property, and have their own homes and household goods. The Socialist party has always advocated woman suffrage and other reforms intended to give the people more complete control of the government. It is opposed to the maintenance of an army or navy. The Socialists have always from time to time advocated concrete reforms similar to those included in the Progressive platform of 1912. The Progressive is like the Socialist in fully recognizing the evils of the present day. He differs from the Socialist in believing that they can be corrected by concrete measures of reform, while preserving the essential features of our present order.

**The Social-
ist party**

It is worth observing that our conservatives are not as conservative as they once were. The net result of the Progressive movement in both the Democratic and Republi-

can parties has been to make all factions of all parties more progressive than could have been believed possible a few years ago. In this sense, whatever may be the party forms of the future, the Progressive movement has been a great success.

The future

It may be confidently prophesied that we shall retain the two-party system. By what combinations this will be effected, no one can tell. It is absurd to suppose, however, that we shall go on having parties whose only reason for existence lies in differences long ago settled. It is possible to see in the history of political parties in the United States a regular development: parties originate in strong popular movements; are carried by them to victory; lose their popular character; grow more conservative, until a new popular movement sweeps them from the field. Republican radical replaced Federalist conservative. Democratic radical replaced Republican grown conservative. Republican radical ousted Democrat "standing pat" on slavery. From all the facts of the situation, each person is entitled to build his own prophecies for the future.

SUGGESTIONS FOR FURTHER STUDY

An excellent brief review of this subject will be found in BEARD, pp. 99-125. BRYCE, chs. liii-lvi, gives a fuller but less up-to-date treatment. RAY, pp. 15-73, gives a good account of existing parties, with ample bibliography. BEARD, C. A., *Contemporary American History*, will prove invaluable. See also his *Readings*, pp. 92-111. Every class should be able to consult JOHNSTON, ALEXANDER, *American Politics*, the best brief manual of our political history ever prepared.

For more advanced students, WOODBURN, J. A., *Political Parties and Party Problems*, will be useful in connection with this and succeeding chapters. MACY, JESSE, *Political Parties in the United States*, deals with the period from 1846-1861. FORD, H. J., *Rise and Growth of American Politics*, is very readable and suggestive. STANWOOD, E.,

History of the Presidency and *A History of the Presidency from 1897 to 1909*, gives very clear accounts of the political issues of each election. DUNCAN-CLARK, S. J., *The Progressive Movement*, is the most elaborate statement of the political principles of that party. There are numbers of party histories which contain much valuable material. The platforms of all parties from the beginning to 1905 are to be found in MCKEE, T. H., *The National Conventions and Platforms of All Political Parties*, 6th edition.

Topics :

The various party movements from the organization of the colonial Whigs by Samuel Adams to the present time may be assigned to students for investigation and report. Especially important will be reports on the principles of the existing parties.

CHAPTER VII

NOMINATION AND ELECTION MACHINERY

Colonial experience

IN colonial elections viva voce voting was frequently employed, and where ballots were used, the simple process of writing the candidate's name on a piece of paper was all the formality necessary. There was no formal provision for the nomination of candidates. The suffrage was limited and the population small. A member or friend of one of the leading families of the district simply announced himself as a candidate, and, without other formality, ran for the office. The one great exception to this common practice of colonial times was the celebrated Boston "caucus," which consisted of a number of persons of patriotic views who got together and put their stamp of approval on candidates for office. Needless to say, their candidates were generally successful. This simplicity of nomination and election machinery continued for a long time in the Southern states, where political power was largely in the hands of the slave-holding aristocracy. In the other parts of the United States it soon disappeared under the influence of a variety of forces.

The legisla- tive caucus

The first of these forces was the fact that state officers, and in many instances presidential electors, had to be chosen at large from the whole state. It was very important to the growing political parties to which we have already referred, that there should be some method of determining who were the party candidates for these offices. What was more natural than that the candidates of each party should be nominated by the members of the

legislature who happened to belong to that party? As time went on, it became clear that those districts the members from which belonged to the opposing political party ought to be represented in the choice of candidates. They therefore were represented by delegates especially elected for that purpose. The next step was the election from all districts of delegates to a convention for the purpose of making nominations. This system of conventions became about 1830 the usual method of making nominations and remained so until after the beginning of the twentieth century.

While these changes had been going on in state politics, a similar change had taken place in national affairs. Washington had been nominated and elected President by practically unanimous consent, and although Adams was not the unanimous choice of the Federalists, he was elected without any formal nomination. In 1800, however, both the Federalist and Republican members of Congress met in secret caucus and nominated candidates for President of the United States. In 1804, the Federalist party being in a hopeless minority outside of New England, the Republican members of Congress met publicly and with all formality nominated their candidate for the presidency. This method of nomination continued down to and including the election of 1824. It became, however, very unpopular. There being but one party in the field, nomination by it was tantamount to election, and it appeared that the members of Congress had practically usurped the power which the Federal Constitution had been careful to deny them, of selecting the President of the United States. The caucus candidate of 1824 ran fourth in the race, and no attempt was ever made again to nominate candidates by this method. Candidates in 1828 were nominated "hit or miss" by state conventions and state

**The rise of
the national
convention**

legislatures. Before the election of 1832, however, the national convention had come into being. It happened that a Free Mason in the state of New York, who had threatened to divulge the secrets of the order, disappeared. This aroused tremendous opposition to the Masonic fraternity, and an Anti-Masonic party grew up, which held a convention in Baltimore in 1831. The party disappeared after the defeat of its candidates at the ensuing election. In 1832, however, the National Republicans and Democrats held national conventions for the purpose of nominating candidates. The weak and disorganized anti-Jacksonian party did not hold a convention prior to the election of 1836. Since that time, however, all candidates for the presidency have been nominated by national conventions.

**The heyday
of the
convention
system**

In theory, the method of nomination of party candidates by delegate conventions, representative of the party, is admirable. It was, indeed, infinitely superior to the system which had preceded it. In its heyday there was a regular hierarchy of conventions, from the assembly district or county conventions, through the congressional and state conventions, to the national conventions at the top. In general, the delegates to the higher conventions were chosen by those below. The whole system rested upon the ward, town, or precinct caucus, which was supposed to be an open assembly of all the local members of the party. In fact, however, as no legal protection was thrown around the action of this caucus, it came to be the scene of every species of fraud and even violence. There was no method of legally determining who had the right to participate in the caucus, which left this fundamental matter to the arbitrary decision of the chairman or the party committee. These meetings became so unpleasant, and they dealt with matters apparently so

trivial, that the great body of the citizens stayed away. They came to be manipulated by the self-constituted party leaders through office holders.

Up to the advent of Jackson to the presidency, there had been few removals from public office for political reasons except in the state of New York, where Van Buren had already gained great strength for the Democratic machine by giving offices as a reward for political services. Jackson did not, as has often been charged, originate the practice of appointment and removal for political reasons in the Federal government, but under his administration it became general. An office holder who owed his position to his political activity and who knew that the success of his party was essential to his continuing to hold it, made the most active kind of political supporter. A close second to him was the man who belonged to the other political party and expected an office when his party should prove victorious. These numerous office holders and aspirants constituted the nucleus of the so-called political machines which were built up after 1830. They controlled through their activities the caucus, and through the caucus they controlled the conventions. They were practically the only men who cared to attend the less important conventions, and they carefully selected the men who attended the greater conventions. In the conduct of the conventions themselves there was, of course, often no limit to the shamelessness of fraud or even violence.

The spoils system

While the various changes which we have been discussing with regard to nominating machinery had been taking place, some progress had been made in protecting elections from the effects of fraud and violence. Elaborate statutes directed against fraud or intimidation had been passed in all the states and had in some degree

Ballot reform

modified the audacity of politicians. The preparation of ballots, however, had continued to be a private matter. Each party prepared its list of candidates, which were handed to the electors by party workers. Sometimes when party lines were not clearly drawn, there would be several groupings of candidates offered. Independent candidates prepared and offered their own ballots, or distributed "stickers," — gummed strips of paper, — which were to be pasted over the name of the corresponding candidate on the party ballot. Of course, under such a system secret voting was far from realized. A man might vote secretly if he wanted to, but the voter who had been bought could be watched to see that he "delivered the goods." It was thought by many persons that the excessive power of political machines was due to this system of balloting. With the twin hope, therefore, of doing away with bribery and intimidation, and of striking a fatal blow at the machine, reformers everywhere took up the cause of the so-called Australian ballot. It was adopted by Massachusetts in 1888, and the other states followed in rapid succession. Under this system the ballot was to be prepared by the secretary of state for state and national elections, or by the county clerk or some similar officer for local elections. It was to contain the name of each candidate, and each voter was to be given an opportunity in a booth out of sight not only of the "hangers-on," but of the election officers themselves, of indicating with a cross the candidates of his choice. He was to fold the ballot so that his choice should be indiscernible, and without unfolding, the ballot was to be placed in the ballot box.

The
Australian
ballot

There have been almost as many variations in the actual form of the ballot as there are states in the Union. Two forms, however, may be taken as typical. The first of

To vote for a Person, mark a Cross X in the Square at the right of the Party Name, or Political Designation. X

GOVERNOR.....Vote for ONE	
NELSON B. CLARK—OF BEVERLY ~~~~~	Progressive Party
WALTER S. HUTCHINS—OF GREENFIELD ~~~~~	Socialist
SAMUEL W. McCALL—OF WINCHESTER ~~~~~	Republican
PETER O'ROURKE—OF MEDFORD ~~~~~	Socialist Labor
WILLIAM SHAW—OF ANDOVER ~~~~~	Prohibition
DAVID I. WALSH—OF FITCHBURG ~~~~~	Democratic

LIEUTENANT GOVERNOR.....Vote for ONE	
EDWARD P. BARRY—OF BOSTON ~~~~~	Democratic
CALVIN COOLIDGE—OF NORTHAMPTON ~~~~~	Republican
ALFRED H. EVANS—OF HADLEY ~~~~~	Prohibition
JAMES HAYES—OF PLYMOUTH ~~~~~	Socialist Labor
CHESTER R. LAWRENCE—OF BOSTON ~~~~~	Progressive-Party Citizens Nom. Paper
SAMUEL P. LEVENBERG—OF BOSTON ~~~~~	Socialist

Section of Massachusetts ballot, to show arrangement of candidates' names under titles of offices.



these is the so-called Massachusetts ballot. In this ballot the names of candidates are arranged alphabetically or by lot under the title of the offices for which they are candidates. A voter must indicate his choice by a cross beside the name of each candidate for whom he intends to vote. The other typical form is the party-column ballot, in which the names of the candidates of the particular party for all offices are arranged in a column under the name of that party. Immediately under the

**Forms of
Australian
ballot**

"TO VOTE A STRAIGHT TICKET, MAKE A CROSS-MARK 'X' WITHIN THE CIRCLE ABOVE ONE OF THE PARTY COLUMNS

ANY OTHER MARK THAN THE CROSS-MARK 'X' USED FOR THE PURPOSE OF VOTING WILL RENDER THIS BALLOT VOID.

IF YOU TEAR, DEFACE, OR WRONGLY MARK THIS BALLOT, RETURN IT AND OBTAIN ANOTHER."

			
DEMOCRATIC		REPUBLICAN	
UNITED STATES SENATOR	SIMEON E BALDWIN	UNITED STATES SENATOR	FRANK B BRANDEGEE
REPRESENTATIVE IN CONGRESS	JEREMIAH DONOVAN	REPRESENTATIVE IN CONGRESS	EBENEZER J HILL
GOVERNOR	LYMAN T TINGIER	GOVERNOR	MARCUS H HOLCOMB
LIEUTENANT-GOVERNOR	GEORGE M LANDERS	LIEUTENANT-GOVERNOR	CLIFFORD B WILSON

Section of a party-column ballot.

name of the party is a circle, and if the voter places his cross in that circle, he thereby votes for each candidate in the list. The voter may, if he so desires, vote for candidates by putting a cross beside each name, but most voters seem to prefer to vote the straight party ticket. On both forms of the ballot blank spaces are left in which the voter may write the name of any person for whom he wishes to vote, whose name does not appear on the ballot. The advantage of the Massachusetts ballot is that it requires ability to read, and a certain degree of intelligence to vote it. Furthermore, it gives a reasonable encouragement to the voting of the "split" ticket. The

party-column ballot is easily votable by the most ignorant person, and it encourages consistent party voting, thereby making more certain the election of undesirable persons who may have been nominated for minor offices. Where machine conditions prevail, this means that the machine may dispose of these minor offices to strengthen itself without much fear of the people. The Massachusetts ballot is now being rather generally adopted. The adoption of the Australian ballot did away to a large extent with bribery and intimidation.

Practically all of the states now require registration as a condition precedent to voting. Some states require registration every year or every two years. Other states provide for keeping names once registered on the voting list indefinitely. The registration is conducted by county, city, or town officers in accordance with specific requirements of the particular state. It is usual to require a residence of thirty days prior to the election, in the precinct, and of from three to six months in the county, and of a year in the state. Severe penalties are attached to the crime of registering falsely or voting under a name not one's own. **Registration**

The adoption of the Australian ballot ¹ made it necessary to have some method of definitely determining what candidates had a right to have their names appear on the **Primary reform**

¹ Some attempts at primary reform had preceded the Australian ballot. In 1866 California passed a law, which it was optional with any party to adopt, regulating the method of calling primary elections or caucuses and requiring that the supervisor of the election must be sworn to the faithful performance of his duties and giving the supervisor the right to examine prospective voters under oath. The act also declared voting by one not qualified and double voting to be misdemeanors. The same year a New York statute forbade "bribery, menace, or other corrupt means or device" in primaries or conventions. In the years following, several other states adopted similar laws. California again took the lead in 1874, with a law extending to the primaries of parties adopting the act all the protections then applied to general elections.

ballot as the nominees of the several parties. Thus the change in the form of ballot made necessary a closer supervision of nominating machinery. The Australian ballot laws provided for the placing of names on the ballot by petition, the number of signers required being usually rather large. This, however, made no provision for the selection of party candidates. It was, therefore, natural that the adoption of the Australian ballot was followed very rapidly by the adoption of laws throwing around the primaries the protection otherwise given to elections. This, however, did not prove sufficient. Conventions were still frequently manipulated by "wire-pulling" politicians, and there was reason to despair of the people ever taking sufficient interest in the primaries so long as their one function was the selection of delegates to conventions. The way out was first clearly shown in the state-wide direct-primary law, adopted in Wisconsin in 1903. It was rapidly followed by similar laws in a majority of states. Even New York, after a prolonged struggle, granted this much needed reform in the closing days of 1913.

**The direct
primary**

Under the direct primary system the names of the candidates to be voted on at the primary of the particular party are placed on the ballot by petition of a certain proportion of the voters. This proportion varies from two to ten per cent. Sometimes the requirement is made that the signatures to the petition shall be distributed throughout the state or district. Sometimes a candidate also is required to pay a fee for the privilege of having his name appear on the ballot. Voters, in registering, are required to indicate the party of their preference. Primaries of all parties are usually held on the same day and at the polling places commonly used for elections. When the voter approaches the polling place, he is given a ballot of the party which he has previously indicated as

his preference. In general, the candidate receiving a plurality of votes becomes the nominee of the party for the office in question.

The direct primary has not, however, solved the problem of popular government. It has, indeed, scarcely come up to the expectations of its friends or the fears of its enemies. Its chief weakness as applied to state elections is that it requires organization to carry the primary elections as well as the regular election. This continues to put a premium upon the control of the party machine and in some instances has resulted in pre-primary struggles quite as unregulated and almost as full of dangerous tendencies as the old primaries themselves.

The state of Pennsylvania, in 1906, provided for the election of delegates at large to national conventions by direct primary. Wisconsin, in 1907, added to her already excellent law the election of all delegates to national conventions.¹ Oregon, California, and several other states followed, adding a popular expression as to the candidates for the presidency, in time for the election of 1912.

Presidential
preference
primary

The details of the presidential preference primary system vary. In some states, as in California, the delegates are all elected at large. In other states four are elected at large and two from each congressional district. Besides being given an opportunity to vote for delegates, whose names are placed on the ballot, by petition in the same manner as those of candidates in any direct primary election, each voter may express his preference for a candidate for President, nominated in the same way. The California law, which is one of the most elaborate, provides that the names of the various candidates for delegate be arranged in a column under the name of the candidate for President whom they prefer, or if they have expressed no preference,

¹ See Merriam, C. E., *Primary Elections*.

in a "no preference" column. Candidates who have been nominated as a group may be voted for by placing a cross in the square beside the names of the group as they appear on the ballot. There is a blank column in which names of presidential candidates and candidates for delegate may be written by the voter.

SUGGESTIONS FOR FURTHER STUDY

Reference should be made to REED, pp. 49-68, and RAY, pp. 74-171 and 247-272. OSTROGORSKI, M., *Democracy and the Party System*, pp. 3-103, gives a very full account of the development of the convention system. Pages 331-350 give an account of the more recent reforms. CLEVELAND, F. A., *Organized Democracy*, pp. 201-242 and 262-272, and MERRIAM, C. E., *Primary Elections*, will be found readable and thoroughly sound books. JONES, C. I., *Readings on Parties and Elections*, pp. 37-71 and 212-225, contains interesting material. Constant reference should be had to the law of your own state and ample use made of illustrative material, such as sample ballots, etc. An interesting assignment will be DICKENS, *Pickwick Papers*, ch. xiii, which gives an account of an old English election.

For the use of teachers the following may be suggested: American and English Encyclopædia of Law, under title "Elections"; BISHOP, CORTLAND F., *History of Elections in the American Colonies*; DALLINGER, F. W., *Nominations for Elective Office in the United States*; HAYNES, G. H., *The Election of Senators*; GOODNOW, F. J., *Politics and Administration*; MEYER, E. C., *Nominating Systems*; LAWTON, GEORGE W., *The American Caucus Systems*; McMILLAN, D. C., *The Elective Franchise in the United States*; OSTROGORSKI, M., *Democracy and the Organization of Political Parties*, vol. ii. LOWELL, A. L., *Government of England*, vol. i, pp. 218-238, describes the English system. Merriam and Ray cited above give ample bibliographies.

Topics:

- The Congressional Caucus.
- Origin of the Delegate Convention.
- The History of Primary and Election Laws in Your State.
- Existing Ballot Law in Your State.
- Direct Primary.

CHAPTER VIII

PARTY ORGANIZATIONS AND ACTIVITIES

WE have already covered the most important phase of the organization of political parties in discussing the means by which party nominations may be secured. Parties, however, perform such an important function in our government, and their activities play such a large part in the life of the people, that we must notice how they are organized for carrying elections and the methods which they adopt for this purpose. **Party organization**

At the very top of the party organization is the national committee. The Republican national committee is made up of one person from each state, selected by the delegation from that state to the national convention. They hold office for four years from the time of their choice. This has had very important results, because the national committee makes up the "temporary roll," that is, a list of those persons entitled to take seats as delegates at the beginning of the convention. The Democratic platform of 1912 provides that their national committeemen shall be elected by primaries in each state and that they shall take office immediately on election. At the head of the national committee is the national chairman. He is elected by the committee, but his name is suggested by the candidate for the presidency, to whom the national chairman is always personally responsible. The success of the campaign depends to a large extent on the tact and energy of the national chairman, for he must know the places where the party strength should be exerted and keep the whole machine moving in harmony. **National committee**

The national committee is divided into a number of subcommittees, one of which, for example, has charge of the raising of funds, and another of the selection and distribution of speakers. For the purpose of conducting congressional campaigns, there is a congressional committee, named by a caucus of the members of the party in the House of Representatives and Senate. Each state has a state central committee, which in states still adhering to the convention method of nomination is created in a manner similar to that of the Republican national committee. In states in which the direct nominations are in vogue, a variety of means have been adopted for constituting the party committee.¹ There are also city, county, precinct, or town committees, now usually named at the primaries.

All these committees, from the national committee down, generally preserve their existence for a period corresponding to the interval between the national, state, or local elections in which they are particularly interested. Sometimes, especially in great states like New York, the committees remain permanently active and retain regular offices. In general, however, including the national committee, they go into abeyance after one election until the next approaches. This system of organization may be marvelously effective, and it has the great merit of flexibility. It can readily be contracted or expanded to meet the needs of the situation.

**Party
workers**

Under the immediate direction of the local committee are a number of persons who are quite ready to labor under its lead. We call them "party workers." Only a small proportion of the membership of any party are workers, and unhappily they do not always represent the

¹ Usually either the party nominees for state and national offices or persons elected directly to the committee.

best element in the party,— rather the contrary. There are, however, certain men who are ready to distribute literature, and to canvass and buttonhole, and in general to exert themselves for the sake of the party. It is from the ranks of the workers that the local committees are recruited, and the views of the party as expressed in its platform and in the utterances of its candidates are to a considerable extent determined by them.

Another matter which deserves mention is the ease with which Americans organize in politics. The most remarkable example of this is the sudden rise of the Progressive party in 1912. Beginning about the first of July with no organization whatever, the Progressives effected an organization, nominated presidential electors in every state in the Union except Oklahoma, and polled a total of 4,123,000 votes. Less dramatic than this, but of equal value in proving the political adaptability of the American people, is the experience of those cities which have adopted the system of non-partisan elections. Previous to each election voluntary committees are organized. The whole machine of an active political campaign is set in motion and the election held, all within the space of a few weeks.

Facility with
which we
organize
politically

We have described the normal party organization. Such an organization is the servant of the party. Occasionally, however, we find the situation reversed and the organization controlling the party. When this state of affairs exists, we call this organization a "machine" and its leaders "bosses." Machines naturally grow up when the policies which the party was created to promote have been carried out or sunk into oblivion. The party, held together by its *esprit de corps*, goes on. Stimulated by hope of political jobs and other favors, the party workers continue as active as before. They frequently dominate

Political
machines

in primaries and conventions because of popular indifference. Once in control, they confidently count upon the party name to induce the rank and file to follow them. If the machine begins to go to pieces, it is patched up with more corruption, greased with more patronage, and it runs on a while longer. Especially in the great states where there is a large proportion of ignorant foreign voters who can be controlled by the workers, machines are powerful. They are promoted by persons who wish to violate the liquor laws and other laws for the protection of morality, and who are willing to pay for the privilege. They are promoted, too, by the existence of great corporations which are willing to buy favorable legislation from those in control of the government.

Political organizations and the non-partisan ballot

A large part of the power of the machine is, as we have seen, derived from the fact that if it can control the process of nomination, it can thus get the exclusive right to confer the party name on candidates. This is the reason why the adoption of the Australian ballot and secret voting failed to break the power of the machine. Many American cities have now adopted a form of ballot which does a good deal toward accomplishing this result. In these cities, any person may have his name placed upon a ballot on the filing of a petition signed by from ten to twenty-five persons. The names appear without party designation. In case there are more than two candidates for the office, and none of them receives a majority of the votes at the election, a second election is held at which the contest is limited to the two candidates who received the highest number of votes at the first election. In this way two results are accomplished: while the candidate may still be nominated by a party, there is no monopoly of the right to bear the party name on the ballot. In the second place, a majority election is secured. This new

system has greatly aided the breaking up of the power of the machine, but without destroying the opportunity for legitimate political organization. Its non-partisan feature has prevented city elections from being decided on national issues—a very great evil. Tammany Hall could not have dominated New York City if its candidates had not always received the votes of many thousands of Democrats, who put national party allegiance before good city government. Majority elections have prevented the votes of good citizens from being divided among several candidates.

Normal party organizations and machines alike have for their main object the carrying of elections. They engage in “campaigns” for the purpose of influencing public opinion in their direction. Sometimes the campaign is a quiet or “gumshoe” campaign. Machines relying on corruption for their results more frequently use this method. Usually, however, the campaign is a very open and noisy affair. Great public meetings or political rallies are held. The old-fashioned rally convinced very few opponents, serving only to arouse the enthusiasm of the party. Of late years, however, many men, especially those of progressive views, despairing of reaching the people through the newspapers which were in the hands of their opponents, have taken to public speaking as a means of reaching the people. The campaigns of Roosevelt, Wilson, La Follette, and Johnson of California have depended to a large extent on their effectiveness as public speakers. The man with a real message can always get a hearing and make converts. Of course this is not true of the speaker who spends most of his time “pointing with pride” to the achievements of statesmen long dead. The national committee and each state central committee conduct bureaus for the

**The political
campaign**

purpose of supplying speakers where they are most needed. Their expenses are usually paid from the party funds, but in general they receive no other compensation.

**Campaign
literature**

For the instruction of party speakers in presidential campaigns, each party gets out a campaign textbook, a volume of several hundred pages containing all the material necessary to prepare a party speech. Great quantities of literature are distributed, particularly portions of the Congressional Record, into which a congressman can get inserted practically anything he desires and which can be sent free under his frank. The state of Oregon originated the idea of providing what is known as a "publicity pamphlet," in which each candidate must take certain space and may take more. He pays a nominal fee for this privilege, and the pamphlet is sent by the secretary of state to each voter. This idea has been adopted in several other states and is worthy of adoption elsewhere. The campaign managers also devote a great deal of time to getting matter favorable to their candidate into the newspapers. Skillful publicity experts are employed and material, sometimes in the form of stereotyped plates, is furnished, especially to the country newspapers. In these days the great city newspapers not only advocate the candidate of their choice in their editorial columns, but sometimes distort the news in order to assist him. This makes it very hard to get from any one newspaper a fair idea of what is happening in a campaign, and has had a great deal to do with the increasing influence of public speaking.

Numerous other campaign activities are the formation of clubs, great parades, and the use of street-car advertising and of posters. Our English cousins have carried this last campaign method to very great extremes, and it is growing in importance in this country. Men who will

not stop to read an article will, because they cannot help it, read the gigantic posters on the billboard.

It takes money to do all these things, and political parties put great reliance on their campaign funds. The amount of money necessary to carry on a campaign has increased very greatly in the last fifty years. Lincoln was elected in 1860 with a campaign fund of less than one hundred thousand dollars. The climax was supposed to have been reached in 1896, when the Republicans were accused of having more than seven million dollars. This was undoubtedly an exaggeration, but they did have so much money as to cause a great deal of comment and to set the wheels of reform in motion. Similar criticisms, however, were made of the extravagance of campaign expenditures in 1904. In the campaign of 1912 the Republicans spent a little under a million dollars, the Democrats a little over a million, while the expenditures of the Progressives amounted to less than seven hundred thousand dollars.

**Campaign
contribu-
tions**

Even more important than the total amount of campaign funds are the sources from which they are received. Up to a few years ago very large gifts from individual rich men and corporations were common and there was a well-founded complaint that they expected and received favors from the successful party as compensation for their contribution. This led to the demand for publicity regarding campaign contributions. In the campaign of 1908, first the Democrats, and then the Republicans, announced their intention of publishing a list of their contributors. In 1911 this was made the law for national elections. Similar regulations have been adopted in many of the states. Another evil source of campaign money was from the assessment of office holders. This has long been forbidden in the case of the United States

**Sources of
campaign
funds**

civil service, but municipal and state office holders have been assessed pretty generally down to the present time. The laws, however, are rapidly being made more stringent with regard to this matter. The bulk of campaign contributions now comes in small amounts from individuals. Rich men of course still contribute, but a smaller proportion of the whole. Candidates themselves frequently put up considerable sums of money, but the bulk of the sinews of war are supplied by the rank and file of the party. The Progressive campaign was financed to a great extent by small subscriptions. This method has a great advantage from the party standpoint, in that every person giving to the party becomes so much the more interested in its success.¹

**Campaign
expendi-
tures**

We have already seen something of the various activities of the political campaign. Most of these are thoroughly legitimate and call for the expenditure of large sums of money. There has, however, been a good deal of improper use of money in influencing elections. This has led to the adoption of corrupt-practices acts in various forms. In some states, as in Pennsylvania, enumeration has been made of objects for which money can be legally spent and expenditures for other purposes prohibited. Several states limit the amount of money which can be spent by the candidate to a certain proportion of the first year's salary of the office he hopes to fill. An Act of Congress, approved August 19, 1911, has limited the amount that a candidate for representative may spend in securing nomination and election to five thousand dollars, and the amount a senator may spend to ten thousand dollars. This, however, is exclusive of personal expenses for travel,

¹ The Socialist party is a permanent dues-paying organization. Each Socialist local unit holds periodic meetings, even when no election is in prospect. Their campaign never stops.

subsistence, stationery, the writing and printing and distribution of letters, circulars, and posters, and telephone and telegraph services. The early corrupt-practices acts in this country proved unavailing because of the lack of publicity attending the contributions and expenditures of parties. The Act of Congress to which we have already referred requires not only publicity of contributions but publicity of expenditure. Even this, it is to be feared, will not entirely prevent the corrupt use of money in elections, there having been devised as yet no method by which candidates or campaign committees can be obliged to render an honest report. If a voter is bribed, the transaction is usually a very private one between the candidates or his agents on the one hand, and the voter on the other. Neither is likely to say anything about it. For the prevention of corruption in elections we must depend primarily upon the standard of morality of the community.

SUGGESTIONS FOR FURTHER STUDY

This chapter covers several subjects of great importance, with regard to which a vast deal has been written. The references are arranged under the several topics.

Party Machinery: The most available account is to be found in RAY, pp. 172-191. FORD, H. J., *The Rise and Growth of American Politics*, pp. 294-333, is readable and inspiring. Reference should also be made to WOODBURN, J. A., *Political Parties and Party Problems*, 193-204; JONES, C. L., *Readings on Parties and Elections*, pp. 169-211. For more thorough study, MACY, JESSE, *Party Organization and Machinery*, will prove valuable.

The Machine: BRYCE, chs. lx-lxviii, is incomparable. OSTROGORSKI, M., *Democracy and the Party System*, pp. 225-281; and RAY, P. O., *Introduction to Political Parties and Practical Politics*, pp. 333-367, will also be found useful. HOWE, F. C., *The City the Hope of Democracy*, MUNRO, W. B., *The Government of American Cities*, and other books on municipal government deal at length with corruption in municipal politics. There are a number of books of a

more popular character which may help to excite interest in the subject. Among them STEFFENS, LINCOLN, *The Shame of the Cities*; LINDSAY, B. B., *The Beast and the Jungle* (appeared in "Everybody's" during 1909); ROOSEVELT, THEODORE, *Essays on Practical Politics*, are notable. For the use of teachers, GOODNOW, F. J., *Politics and Administration*, is especially recommended, together with OSTROGORSKI, *Democracy and the Organization of Political Parties*.

The Campaign: BRYCE treats this subject also with great brilliancy, chs. lxxi-lxxiii. See also RAY, pp. 192-204 (gives excellent bibliography), OSTROGORSKI, M., *Democracy and the Party System*, pp. 166-206. A very entertaining magazine article is that by GUILD, CURTIS, on Spellbinders, "Scribner's," xxxii, p. 561.

Party Funds and Their Expenditure: The most available reference is RAY, pp. 205-230, which contains a very full bibliography.

It will be well for the teacher to secure copies of the campaign textbooks of the leading political bodies in the last presidential campaign. If an intelligent local politician can be secured to describe political methods, it will greatly assist the students in getting a clear idea of the subject.

Topics:

Advantage should be taken of the opportunities for first-hand information concerning political methods. Students should be encouraged to attend and report on political meetings and collect campaign literature.

Other subjects for report are: Organization of Local Committee of Republican or Democratic Party; Organization of a Socialist Local; Laws of Your State regarding Campaign Expenditures.

PART III
STATE GOVERNMENT

CHAPTER IX

THE DEMOCRATIC EVOLUTION OF STATE CONSTITUTIONS

THE form of government created by the early state constitutions established the bare outline at present in vogue. It was soon vastly modified in its spirit and working by the rising spirit of democracy. The conditions of the new country, in which almost infinite possibilities of progress were open to every individual, no matter what his origin, made strongly for the feeling that one man was as good as another. One man was more nearly as good as another than is possible in older societies. The language of the Declaration of Independence and the implications from it to which we have already referred carried men irresistibly towards a belief that all men should participate equally in the choice of their rulers. The French Revolution, although its excesses shocked the hard-headed American, served undoubtedly to kindle his desire for a government in which the whole people should govern.

The democratic movement]

We have seen how the immediate effect of the American Revolution was to extend the suffrage while still leaving in effect in all the states property and religious qualifications. Early in the nineteenth century they began to disappear in the older states; the states of the new West never established them.¹ By 1860 all such tests had disappeared except in Pennsylvania, where tax paying was a condition to voting, and in Rhode Island and South

Broadening the suffrage

¹ Maryland abolished all property qualifications in 1810; New York, except for negroes, in 1821; Tennessee in 1828; and Mississippi in 1832.

Carolina. In general, it is fair to say that in 1860 the United States had a system of white male suffrage. After the Civil War, in most of the Northern states voluntarily, and in the South by the compulsion of the Fourteenth and Fifteenth amendments to the Constitution, the right to vote was extended to the negro. In eleven states the ultimate step toward universal suffrage has been taken by extending it to women on the same terms as to men.¹ There can be no doubt that as the demand for the ballot grows among the women themselves, it will be granted to them everywhere.

**The educa-
tional test**

At the same time that we have been in general broadening the suffrage, there have been in operation forces tending to restrict it. One of these forces has been the growing belief that persons too ignorant to read and write must be lacking in the intelligence or information necessary to the wise use of the ballot. Acting on this theory, Connecticut in 1855 adopted an educational test. She was soon followed by Massachusetts, and somewhat later California, Maine, New Hampshire, Washington, and Wyoming established a similar policy. The test is not a severe one, consisting merely in the proof of one's ability to read a clause of the constitution of the state, selected at random, and to write one's own name. A somewhat similar result has been brought about by the New York registration law, which requires each voter to sign his name unless he is unable to read or write. Thousands of persons, unwilling to acknowledge their illiteracy, voluntarily remain unregistered.

In the South, the motive of eliminating the negro as a political factor has led to some very interesting restric-

¹ These states are Arizona, California, Colorado, Idaho, Kansas, Montana, Nevada, Oregon, Utah, Washington, and Wyoming. In Illinois women may vote for all except "constitutional" officers, *i.e.* those whose existence is prescribed by the state constitution.

tions on the suffrage. Sometimes a simple educational test has been established, which differs, however, very much in its intent and effect from the similar provisions in the Northern states. In Mississippi, for example, the test is to read, or understand when read, the constitution of the state. When an ignorant white man appears before the registration officer, he has read to him a very simple sentence, but when a negro puts in an appearance he is given one of the more abstruse provisions to define and his answer is rarely satisfactory. Another type of anti-negro provision is that of the Virginia and Texas constitutions, requiring the payment of a poll tax as a condition precedent to voting. The negro is apt to forget all about the necessity of making payment, or, if he does make it, improvidently loses the receipt. It sometimes results, especially in cities, in the political bosses paying the poll taxes of large numbers of negroes in order to get their votes. It is to be said, however, that while this sort of restriction operates more harshly against the negro than against the white man, its effect has been to disfranchise a very considerable number of the poorer class of whites. Still a third type was that which required ability to read and write, or the possession of property of a certain value, but with the proviso that all persons who could vote at a time when no negroes could vote, and their descendants, are exempt from these qualifications. These exceptions are known as "grandfather clauses." This method of eliminating the negro voter has been declared unconstitutional by the United States Supreme Court in the leading case of *Guinn vs. Anderson*.

The Constitution of the United States as adopted in 1787 left the question of the suffrage wholly to the states, even as to the election of representatives in Congress and presidential electors. At the close of the Civil War, with

**The negro
and the
suffrage**

**The United
States Con-
stitution and
the suffrage**

the intention of giving the freedmen protection against encroachments on their liberty by their late masters, the Fourteenth Amendment to the Constitution was adopted. It provided that "when the right to vote is denied to any of the male inhabitants of such states, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such states." Shortly after, to make the negro's right to vote more certain, the Fifteenth Amendment was added, declaring that the right to vote should not be denied or abridged on account of "race, color or previous condition of servitude." There has never been any serious attempt on the part of Congress, in whose hands the question of reducing representation rests, to carry out the provisions of the Fourteenth Amendment. There seems to be a disposition on the part of the country at large to permit the South to meet its peculiar problems in its own way. It is, therefore, all the more worthy of note that the Supreme Court at its October term, 1914, declared unconstitutional the "grandfather clause" of the Oklahoma constitution¹ and a similar provision in the city charter of Annapolis, Maryland.² Henceforth the literacy test, which is the most reasonable test of the right to vote, must be applied equally to all races and colors.

**Naturaliza-
tion**

In addition to these limitations on the privilege of voting, there are certain others of great importance. In the first place, generally speaking, it is necessary to be a citizen of the United States. Citizenship may be acquired

¹ *Guinn vs. United States*, 35 Supreme Court Reporter 926.

² *Myers vs. Anderson*, 35 Supreme Court Reporter 932.

by birth within the United States, except in the case of the tribal Indians. Persons born abroad, of American parents, are permitted to elect to be citizens of the United States and may on their return to this country enjoy all the privileges of American citizens. Any immigrant who is a "white person" or of African descent may be naturalized after he has lived in the United States for five years. Any judge of a United States or higher state court has the authority to issue naturalization papers. It is necessary for the applicant to file with the court, at least two years before he finally comes up for admission, a statement on oath that he intends to become a citizen of the United States. A certified copy of this statement is furnished the would-be citizen, which is sometimes spoken of as his "first papers." A few states permit persons who have got as far as this on the road to citizenship to vote. The petition for complete naturalization must be signed by the applicant and contain a sworn statement that he is not a believer in polygamy and that he renounces his allegiance to his native country. His term of residence was formerly proved by the sworn statements of two witnesses, but because of the ease with which such witnesses could be furnished by ward politicians, he must now present also a certificate from the Bureau of Immigration stating the time and place of his arrival. When the applicant comes before the court for naturalization, the judge examines him as to his knowledge of American history and institutions. Until recently this examination was almost always a farce. It is now rather strictly administered. Some judges send the applicants to a class conducted in connection with the city night schools. When the class is prepared, they are graduated into citizenship with suitable ceremonies. The final step is the oath of allegiance to the United States, which transforms

the alien into a citizen. The naturalization of an alien makes citizens of his wife and minor children. If, on the other hand, an American woman marries a subject or citizen of some foreign prince or state, she loses her American citizenship.

**Other
limitations**

All the states have followed the English precedent of fixing the age at which persons may vote at twenty-one years. Criminals, idiots, and insane persons are excluded from the suffrage in all the states. The more serious crimes carry with them perpetual disfranchisement, unless citizenship is restored by the clemency of the pardoning authority. Paupers and inmates of public institutions are frequently not permitted to vote.

**The long
ballot**

Another result of the democratic movement has been to increase the proportion of elective officials. The increasing complexity of American life made necessary a larger number of executive departments. Jobbery and corruption had so frequently marked the conduct of the legislatures to which the early state constitutions had intrusted the election of officers that they had forfeited popular confidence. The old-time dislike of executive power prevented the new positions from being made part of the governor's patronage. Where more safely, it was reasoned, could the power of selecting officers be lodged than with the "sovereign people" whose interests they are to serve? The result has been that a large number of officers who under any rational scheme of administrative organization should have been subordinates of the governor, were made his coördinates and elected on the same ticket with himself. The judges likewise, and for the same reason, have been made generally elective. On the same principle a rapidly increasing number of county and city officers came to be chosen directly by the people. A glance at the ballot voted by the people of any state in 1914

would show you the result in comprehensive form. The ballot voted by the Democrats of New York City in the presidential primary of 1912, which had the names of candidates arranged in a single column, was so long that a tall man standing on a chair could not hold it clear of the floor.

In spite of its democratic appearance, the "long ballot" has operated very powerfully against genuine democratic government. It has imposed a burden on the voter greater than he can reasonably bear. Besides the governor and lieutenant-governor, the executive officers elected have purely ministerial duties to perform, which, while they are of undoubted importance, are not of a character to arouse popular interest. So true is this that an elective state officer seldom "gets into the newspapers," unless he has been guilty of official wrongdoing. The candidates for these positions have generally been obscure men and by reason of their very numbers are inconspicuous in the campaign. The blaze of publicity which surrounds the candidates for governor seems only to intensify the gloom in which the aspirants for these minor offices are lost. It is very rare to find in any gathering of ordinary citizens more than five to ten per cent who know the names even of the secretary of state, comptroller, treasurer, surveyor general, attorney general, and other elective officers of their state. Under such circumstances it is only natural that the voter, ignorant of the fitness of the respective candidates, should simply vote his party ticket straight. Here, indeed, has been one of the chief props of the power of political machines. These positions could be disposed of in the way to get the most political support for the machine without risk of exciting the voters to revolt. It was thus that the "long ballot" played democracy false by giving the real selection of state offi-

**The long
ballot really
undemo-
cratic**

cials into the hands, not of the people, but of rings and bosses.

**The short-
ballot
movement**

A great movement has lately begun for a short ballot. Already nearly three hundred cities have shortened their ballots by adopting the so-called commission form of government. In state affairs the movement has not gone so fast, but it has behind it the influence of all the great political leaders of the country, including Presidents Taft, Roosevelt, and Wilson. The short-ballot advocates have a strong argument in the example of other countries, especially England, where a voter votes for members of Parliament usually one at a time, and at entirely separate elections votes for single members of the borough or county council. The short-ballot advocates would abolish all elective officers in the state government except the governor, lieutenant-governor, and legislators; in the city all except the mayor and council; in the county all except the county commissioners or supervisors.

**Constitu-
tions and
amend-
ments**

The state of Massachusetts, by submitting her constitution of 1780 to the people for ratification, set a fashion which has become practically universal among the states with respect to new constitutions or amendments. Wholly new constitutions are drafted by conventions usually called by the legislature, although in some instances the question of calling the convention must be submitted to the people. In New York it must be so submitted at certain intervals. Amendments are submitted to the people directly by the legislature. A larger majority than in the case of an ordinary law (two thirds is the common figure), or passage by two successive legislatures, is usually required. Almost every state has had its constitution remade in entirety at least once, some of them several times. Amendments have been common. California adopted twenty-two at once in 1911. As a result,

our state constitutions are getting to be very long documents full of detailed provisions that really ought not to be in the "fundamental law." The effect of this is to limit the power of the legislature and augment that of the courts. If written constitutions are worth having at all, they should be confined to general principles and be reasonably permanent. It is absurd to have to amend the constitution every time it is desired to pass a bit of really important legislation.

Many other matters are usually submitted to the people for their approval or disapproval. As a safeguard against the extravagance of legislatures, bond issues are usually valid only after such approval.¹ Some questions, like the removal of state capitals, have also been submitted to the people of the state as a whole. Furthermore, it has become the practice of our legislatures to pass laws which are to go into effect only in those localities which vote in favor of them. The best known of these laws are the so-called local-option liquor laws, which have been adopted all over the country.

In some ways the most interesting phase of the democratic evolution of state government has been the adoption of the recall, the initiative, and the referendum as applied to laws in general. The effect of these reforms has been to put the government into the control of the people, not periodically as formerly, but at all times. They are simply the logical fulfillment of the theory of democracy. They are open to attack, but only as democracy itself is. A full discussion of the merits and defects of the initiative and referendum will be taken up when we come to consider the process of lawmaking. The recall provides that if a petition for the recall of an officer signed by a certain proportion of the qualified

**Other
referenda**

**The initia-
tive, refer-
endum, and
recall**

¹ See Chapter XLI.

electors of the state, usually twenty-five per cent,¹ is filed with the secretary of state, an election must be held to determine whether or not that officer shall be removed and some one else elected in his stead.² The recall has never yet been employed to remove any state officer. It is scarcely likely to be freely used upon officers elected by the people at large, owing to the expense and difficulty of getting the necessary signatures. In any case it will probably be used with great moderation.

SUGGESTIONS FOR FURTHER STUDY

The development of the state constitutions is admirably dealt with by BEARD, pp. 78-89, 160-163, and 453-457, and *Readings*, pp. 72-92, 150-153, 391-410, and BRYCE, chs. xxxvii and xxxviii. On the short ballot see CHILDS, RICHARD S., *Short Ballot Principles*, and the publications of the *Short Ballot Organization* (383 Fourth Avenue, New York City). See also REED, pp. 95-107. There are a number of manuals on naturalization intended for prospective citizens which may prove useful, among which may be mentioned KALLMEYER, *How to Become a Citizen of the United States*, and O'NEIL, R. K., *Naturalization Made Easy*.

A study should be made of the constitutional development of your own state, using the original documents. They may be obtained from the secretary of state or found in THORPE, *op. cit.*

The teacher may find the following helpful: DODD, W. P., *Revision and Amendment of State Constitutions*; DEALEY, J. Q., *Growth of American State Constitutions*; WISE, JOHN S., *Citizenship*, a very thoroughgoing treatise on the law relating to citizenship; BALDWIN, SIMEON E., *Modern Political Institutions*, pp. 45-79.

Topics:

A discussion of Woman Suffrage will be interesting.

History of the Suffrage in Your State.

¹ Twelve per cent for state officers in California.

² The recall was introduced into the field of state government by the people of Oregon, June 1, 1908. It has since been adopted by California, in 1911; Arizona, in 1912; Colorado, in 1912; Idaho, in 1912; and Washington, in 1912.

The Long Ballot in Your State.

Progress toward a Short Ballot.

Recall Provision of Your State Constitution, if there be such a provision.

The Recall: Arguments For and Against.

The several constitutions of your state and the amendments of its present constitution may be divided up as topics among a considerable number of students.

CHAPTER X

THE GOVERNOR

Growth of
the gover-
nor's power

As we have already seen, the governor in the early state constitutions was a well-to-do and dignified but not very powerful officer. Since that time very great changes have taken place in his position. He has lost somewhat in dignity, but he has made it up in substantial power. Governors no longer refuse, as did John Hancock, to call upon a visiting President of the United States in the belief that such a visit would be inconsistent with their dignity, but they exercise far more influence over the fortunes of their respective states than even the governor of Massachusetts in 1789. This change has been brought about partly by an increase in the powers accorded the governor by the Constitution and partly by the entirely extra-legal growth of his political influence as chief of the state.

The gover-
nor and the
elective
state
officers

We naturally think of the governor as the head of the executive department of the state government. This is true only in part. In the early days, the power of appointing the principal administrative officers was vested in the legislature more commonly than in the governor. When this power passed from the hands of the legislature it was given, not to the governor, but to the people themselves. We have seen how this has resulted in such places being filled by the political bosses with any one whom it has suited their convenience to name, regardless of his fitness for the position. The governor is able to rely neither on the honesty and ability of those officers, nor, what is perhaps equally important, on their loyalty.

They may, if they belong to another party or faction, set deliberately to work to embarrass his administration. If it could be said that they represented the wishes of the people in so doing, there would be less cause for complaint, but they are in no real sense the choice of the people. Thus the governor, who has been, as we shall see, deliberately selected by the people to be their special representative in the government of the state, is by no means the real head of the state administrative system.

Of late years there has been a tendency toward enlarging the appointing power of the governor. Most of the more recently created positions are filled by him. But even here he has been denied a free hand. Usually his more important appointments require the approval of the upper house of the legislature. In Massachusetts there still lingers a governor's council, whose principal business is to approve the governor's appointments. His appointments are usually made for fixed terms and, during the duration of his term, the officer is frequently removable only with the consent of the upper house. Sometimes the appointee is irremovable, except for official misconduct amounting nearly to crime. Further, many of the departments, especially those controlling state institutions, have been placed in the hands of boards whose members retire in rotation, so that it may take a governor most of his term to change the complexion of the board sufficiently to secure its coöperation with his ideas. Indeed, in many states the governor is legally quite powerless to direct the administration of the state's business. Many strong governors have chafed under these restraints and have protested strenuously against them.¹

The governor's power of appointment

¹ There is now apparent a disposition to give the governor a more effective power of removal and appointment. This may be illustrated by the action of the legislature of California in 1911. Several important officers, including

The governor's influence on administration

A strong governor, however, is able to exercise a great deal of influence over the state administration. If the elective officers belong to his own party, his position of leadership in the party may enable him to enforce loyalty to his policies. By investigations, the threat of publicity, and the moral and political force he derives from his position, he may control even the stiff-necked and obstinate among the appointive officers. A weak governor, on the contrary, who is able to rely only on his legal power, is helpless to regulate the administration of the state's business. Most of the time he can be no more than a spectator.

Military power

As chief of state the governor is commander in chief of the militia or National Guard. He never takes the field in person, but through his appointee, the adjutant general, directs and controls the organization of the state's military forces and directs its operations in time of trouble. Perhaps the most important of his military powers is that of employing the militia to enforce the laws of the state and to suppress riots and other disturbances. Ordinarily it is the custom to wait for the application of the local authorities for assistance, but if the governor deems the situation to demand it he may proceed to suppress the disturbances without further delay. The governor's control over the troops of the state ceases when, in case of war, they are actually mustered into the service of the United States.

Power of pardon

In all states the governor possesses the power of pardoning persons convicted of crime. A pardon can

the superintendent of banks, the labor commissioner, and the building and loan commissioner, formerly holding for fixed terms, will henceforth hold only during the pleasure of the governor. The superintendent of printing, formerly elected by the people, is now appointed by the governor, and the railroad commissioners have likewise been changed from elective to appointive tenure.

never be granted prior to conviction, and the governor's power ordinarily does not cover the case of persons convicted of treason. They may be released only by the action of the legislature. In most states the governor exercises his pardoning power with the advice of a pardon board of some sort, but in others he has to rely on his own discretion. It is a fact that a great many prisoners—and their relatives—feel that they are suffering an injustice in being kept in durance, so that the applications for “executive clemency,” as it is called, are very numerous and a large part of the time of the governor's office is occupied in their consideration. It is not unusual for the governor to hold “hearings,” at which are heard the friends of the applicant for clemency and the prosecutor who secured his conviction.

Another duty of the governor is to take action on **Extradition** “requisitions” for the extradition of persons accused of crime. These are simply requests from the governors of other states or the representatives of foreign countries that the person named be delivered into the custody of their agent. The Constitution of the United States requires that fugitives from justice from a state shall be surrendered by the state to which they have fled. The same right has been conferred by treaty on foreign countries. There are, however, many questions, such as those affecting the identity of the person accused, which may properly be urged before the governor in opposition to his honoring the requisition. Further, while the legal duty of the governor is clear enough, there is no way of obliging him to return any accused person if he does not think it right and proper to do so. The result is that a good deal of the governor's time is taken up by hearing the opposing parties in requisition cases. The governor honors a requisition by issuing what is known as a “war-

rant of rendition," which is simply an order directed to any peace officer of the state to deliver the person accused to the agent of the state requesting his return. It is customary that the accused should be under arrest at the time the warrant is issued, but it is not necessary that such be the case. The governor has the corresponding duty of requesting the return of fugitives from his own state.

Miscellaneous duties

There are certain minor executive functions which fall to the lot of the governor, such as commissioning all officers, appointing commissioners of deeds and notaries public, and serving as a channel of communication between the United States government and the minor civil divisions of the state.

Demands on the governor's time

One of the most onerous portions of the governor's duties is in representing the state on all sorts of formal occasions. No county fair is complete without its speech from the governor, and he is constantly obliged to refuse invitations to appear at dedications, anniversaries, banquets, and kindred occasions which are poured in on him from every hand. A surprisingly large proportion of the population of the state wish to see the governor on matters which appear important to them, and in spite of the utmost vigilance on the part of his secretaries a great many do see him. Those who cannot see him, write letters. These personal visits and letters relate to every imaginable subject. For example, recently a man wrote from France asking the governor of California to trace relatives who came to that state sixty years before and had never been heard from. Almost in the same mail came a plea from a father of a family of six who expected the governor to provide means for him to come to the state. Some come from honest people, some from rogues. They doubtless help to keep the governor in touch with the people, but they all help to complicate his task.



The governor's room in the state capitol at Albany, New York, showing Governor Charles E. Hughes at his desk.

We have seen that the colonial governor was, through his possession of an absolute veto on the acts of the legislature, really a third branch of that department of the government. We have seen, too, how in the early state constitutions, except in that of Massachusetts, this participation in the making of laws was denied him. One result of the reaction against the too great responsiveness of the legislatures to the people was the extension of the veto power. Georgia, in 1789, and Pennsylvania, in 1790, adopted veto clauses similar to that of Massachusetts. Since the beginning of the nineteenth century practically every new constitution has given the governor a veto. Rhode Island and North Carolina are now the only states in which he does not possess this power. Several of the earlier constitutions made a simple majority sufficient to pass a measure over a governor's veto. Nine states have at present this rather ineffective form of the veto. In Delaware and Nebraska, the necessary number is three fifths of all members elected. In the rest of the states it is two thirds, more frequently of all the members elected, but in some cases simply of those present and voting.¹

The veto

Even more significant than the general adoption of the gubernatorial veto has been the change in the extent to which it is thought right to use it. The early governors conceived the veto to be a means of protecting the executive department from aggression on the part of the legislature, or at most for correcting its more dangerous follies. That they were to scrutinize every act and veto, or sign it on its merits, never entered their heads. This, however, is exactly what a conscientious governor does to-day. The people look to the governor to save them

Use of the veto

¹ The methods of exercising the veto power will be described later. (See Chapter XII.)

from the mistakes of the legislature. As a result, all bills receive his careful consideration. Of course it is impossible for the governor to study personally the details of every bill, but with the assistance of a legal adviser, one of his secretaries, or others, he gathers the information necessary to a decision. It is customary to allow the friends and opponents of a bill to be heard before he signs it, and he seldom vetoes a bill without giving notice to the member who introduced it. It is only rarely that a measure is passed over the veto. So great is the governor's prestige that unless the legislature is very strongly and bitterly opposed to him, it will yield the point even when the bill originally passed by a large majority. The governor has therefore become in a very real sense a third house of the legislature.

**Governor's
messages**

Another power which the governor has everywhere is that of calling matters to the attention of the legislature by means of messages. This power is used with varying forcefulness according to the temperament of the governor. A message not only calls a matter to the attention of the legislature, but through the newspapers, which practically always carry it in full, to the people of the state. The governor can thus create an issue and summon the people of the state to his support. If he has the political sagacity to do this wisely, it is a great source of strength to him.

**Control of
the legis-
lature**

Most strong governors have some projects — planks in the platform on which they were elected — which they are desirous of having pushed through the legislature. These are known in the language of the capital as "administration measures." They are supposed to have behind them the full strength of the governor, and unless the legislature is in the hands of men determinedly opposed to him they will become law. First, all men who

agree with the governor, who have followed his political standard, are sure to be for them enthusiastically. Second, all those men — and they are numerous in every legislative body — who desire the crumbs and pickings of politics, are likely to be for them. They well recognize the power of the governor and are anxious to secure his favor. Third, many opponents of these measures on principle are made to feel the weight of the governor's displeasure. They discover that the governor can veto their bills, can refuse them patronage, can deny them the many favors which are at the disposal of the administration, and finally, through the control which he has of the best means of approach to the people, can do them infinite damage with their constituents. It is indeed a strong man, either in his consciousness of rectitude or in the hearts of his constituents, who will brave the governor's ill will. For motives sometimes good and sometimes bad, this engine of the governor's power is frequently set in motion, and it is not unusual for the governor not only to have the last word on legislation through his veto, but to have a controlling voice in the introduction and passage of the more important measures of the session. The governor sits quietly behind the big desk in his office and by "sending for" various members directs the whole struggle.

Perhaps the most important source of the governor's really great power is in the fact that he alone is the real representative of the people of the whole state. The legislature, made up of men elected by districts, does not in the truest sense represent the state as a whole. Neither do those other state officers whose inconspicuous position has prevented the people from really choosing them. The governor alone represents the whole state, and he is strong with the strength of the vast body of men behind him. He has a position of real prominence, from which, if he

Sole representative of the whole state

has talent and disposition for it, he may lead the people. Every word that he says on any matter of importance is "news" and is eagerly seized upon by the hungry reporters. If he is announced to speak, thousands flock to hear the governor. He has the ear of the people at the same time that his high position gives weight to his words.

Conclusion

To sum up the position of the governor: He is weak so far as the legal powers given him by the constitution is concerned, but he has a vast political influence. He is weak in his control of administration, which is, theoretically and constitutionally, his sphere, but he is strong as a member of the legislative department. His position is in this way an anomalous one, and the anomaly is being corrected by a moderate tendency to increase his administrative power. He has absorbed all that part of the people's affections which the legislature has lost, and more. He is already the most important factor in state government, and he will be more important before he is less so.

SUGGESTIONS FOR FURTHER STUDY

The first choice for reading to supplement the text is BEARD, pp. 488-499. See also *Readings*, pp. 432-456. REINSCH, P. S., *Readings on American State Government*, pp. 1-40, offers some exceedingly well-selected articles on the governor. BRYCE is very disappointing on this subject (see vol. i, pp. 537-540 and 498-501), having added practically nothing in the later edition to his original statement. His views may be used effectively for comparison with those expressed in the text.

For the use of teachers, see FINLEY AND SANDERSON, *American Executive and Executive Methods*; FAIRLIE, J. A., *The State Governor* (reprinted from "Michigan Law Review," March and April, 1912).

Special study should be made of the position of the governor in the constitution and laws of your own state. The textbooks on government of particular states rarely give more than bare details of his qualifications, method of election, etc. By searching about,

however, it will be possible for the class to construct an outline of the powers of your governor.

Topics:

The lives of some of the more prominent governors in the history of the state may be assigned to students for report to the class. This will help to make the governorship appear real.

CHAPTER XI

THE LEGISLATURE

Bicameral legislatures

WE have seen that the colonial legislatures consisted of two houses, except in Pennsylvania and Delaware. Pennsylvania continued to have a single chamber only for a short time after Independence; Georgia and Vermont experimented briefly with the idea but soon gave it up; so that now two chambers are the universal rule. There was at first some variety in the names applied to these houses, but the smaller or upper house is now known in all the states as the "senate." The larger or lower house is called in some states the "house of representatives," in others the "assembly," and in still others the "house of delegates." The first is the most popular designation, and for the sake of convenience we shall use it when referring to the lower house.

Relative importance of the two houses

The houses differ very little in the powers conferred upon each by the constitution of the state. They usually have the same privilege of originating bills, except that in some states bills raising revenue or the general appropriation bill must originate in the lower house. They differ to a considerable extent in their size and composition. The relative importance of the two houses varies somewhat from state to state. The upper is always smaller, the house of representatives being usually a multiple — two or three times — of the senate. Senators in general have a longer term than representatives. In thirty-one states it is four years, in one state three years, in fifteen states two years, and in one state, Massachusetts, the term is only one year. Representatives have a

four-year term in three states only, a one-year term in four, while in the rest the term is two years. The senate is very frequently a continuing body, only half of its members retiring at each election. The long term, the fact that at least half the members of the house are in most states sure to have had legislative experience, and the larger size of the districts they represent tend to make the senate the stronger of the two bodies. The personnel of the senate is more experienced, more able, and of more political consequence than that of the house. As a smaller body it can transact business more efficiently. The share it has in the governor's power of appointment adds to its influence.

It is the custom in this country to pay members of legislative bodies. The rates are not high. Some of the states offer a fixed sum per annum or per session, all the per annum states having annual sessions. The highest rate is \$1500 per year in New York and Pennsylvania. Ohio, Illinois, and Minnesota give \$1000 per year. California pays \$1000 for each regular session and ten dollars per day for special sessions. Several of the states, instead of paying a lump sum, give a per diem of from twelve dollars in Montana to three dollars in Kansas and Oregon. In every case, the rate of payment of the members of the two houses is the same. In addition to the compensation above referred to, the members are ordinarily given an allowance for traveling expenses between their homes and the state capital. Ten cents a mile, going and coming, is the usual rate allowed. It of course far exceeds the actual cost of the journey, and this "mileage," as it is called, becomes a valuable perquisite, especially to the member from a distant part of the state.

**Salaries and
mileage**

For a long time sessions of the legislature were held annually. With that growth of distrust of the legisla-

Sessions

ture to which we have referred, the people began to evince a decided desire to limit the activity of the legislature by making its sessions less frequent and by setting a time limit on each session. Now in most of the states outside of the Northeastern ones, which cling to annual sessions, the rule is to have a regular session once in two years. In Alabama and Mississippi the interval has been made four years. Sessions are limited sometimes to sixty, sometimes to ninety days or longer. The extreme limit has been reached in Alabama, where a regular session of fifty days may take place once in four years. No limitation has been set upon the governor's power of calling special sessions, which may pass laws only upon subjects referred to in the call. In those states in which regular sessions are infrequent, special sessions are correspondingly plentiful. It is by no means uncommon for a governor to call a special session immediately following the regular one, in order to finish the work which could not be concluded within its straitened limits. It is worthy of remark that the Massachusetts legislature, which does perhaps the most thorough work of any, meets annually in January and sits at least until June. The advocates of the limited session imagined that when a time none too long for the transaction of absolutely necessary business was all that was allowed, the legislature would attend to that necessary business and indulge in no mischief. Now, any one at all familiar with the conduct of legislative bodies knows that the time to slip through some measure which will not stand the light of day is in the last days of the session, when each member is too busy with his own affairs to scrutinize the schemes of his neighbors. But under the limited-session plan, the whole session is its last days. Hence as a matter of fact these restrictions upon the activity of the legislature have

had no effect in stopping bad bills and they have had disastrous effects in preventing the proper consideration of the more important measures.

In all the states except Illinois, the members of both houses are elected one from each of the senatorial and representative districts into which the state is divided. It is the universal practice that they must be inhabitants of the district which they represent. The districts from which the members of the lower house are elected are usually divisions of the senatorial districts. It is common to use the county unit as a basis for forming these districts. In some states, as New York, there is a rule that each county must have at least one member of the lower house, which results in giving the smaller counties more representation than their population would warrant. Of course, wherever county lines are followed, it is impossible to have the districts entirely uniform, even when an honest endeavor is made to have them so.

Apportionment of legislative districts

About one third of the states provide for a reapportionment, after each census, into districts as nearly as possible of the same size as to population. These periodical reapportionments are the occasion of some of the most disgraceful political scheming of which our legislatures are capable. It is doubtful if there has ever been an honest apportionment. Invariably the political party in control of the legislature takes advantage of the situation to arrange districts which will enable it to elect more than its share of the members of the two houses. The personal interests of the members also are consulted, to the detriment of the public good, since few men are so patriotic as to consent to destroy their own districts, and consequently their chance of reelection. Most of the constitutions require that the districts shall be of contiguous and compact territory, but even with this restriction

The gerrymander

much that is unfair is perpetrated. Sometimes even the conventions which have framed state constitutions have indulged in these "gerrymanders." The New York convention of 1894, for example, provided that no county should have more than one third, and that no two counties separated only by public waters should have more than one half, of the total number of senators. As a matter of fact the counties of New York and Kings (Brooklyn) have already more than half the population of the state. Discrimination was also made in favor of the rural counties, by requiring one assemblyman from each county. Still greater inequalities exist in Connecticut and Vermont, where through the maintenance of a system of town representation which happens to serve the interest of the dominant political faction, one member represents a few hundred while another represents many thousand constituents. Proportional representation has been often suggested as a remedy for these abuses, but no state except Illinois has ever put into effect any such system.

**The personnel of
the legislature**

The personnel of the two houses shows a higher level of ability and experience in the senate than in the house. Many men are promoted from the lower to the upper house. While the salary is the same, there is an air of solid prosperity among the senators which is rather lacking among the representatives. Very few laboring men find their way into the senate. On the other hand, their presence in the lower house is by no means unusual. In both, approximately fifty per cent are lawyers, the only difference in that respect being that the lawyers of the senate evidently earn larger fees. The remaining members of both bodies are a varied assortment of middle-class Americans: farmers, merchants, editors, contractors, real estate dealers, bankers, and a large consignment who, if they were entered properly in the manifest, would



The state assembly chamber, St. Paul, Minnesota.



The state senate chamber, Columbus, Ohio.



appear as "politicians." The senate farmer is more likely to be of the capitalist variety than the house farmer, and the same difference prevails in the other occupations.

These men are fairly representative of the average intelligence of the community. They have mostly been trained in practical affairs which, if not of a magnitude sufficient to prepare them thoroughly for the management of the business of a great commonwealth, have sharpened their wits sufficiently for them to coöperate effectively with others in that management. They contain among their number a fairly large proportion of those who are not in politics "for their health." They sometimes used to bring to the capital for their amusement a dissolute crowd of "hangers-on," but that is now happily less frequent. On the whole, they are not so bad as they might be nor so good as they ought to be. The majority are well-intentioned, hard-working men, and they strive very earnestly during the time they are at the capital to give the best they have to the service of the people. All too rarely do they have much to give. It is sometimes the unfortunate fact that the ablest men in the body are not the most public-spirited members. It is usually possible to count on one's fingers the men who in both character and ability are really well qualified for their work. The struggles of these men with the adept rascals of the body for the control of the honest but dull majority is the story of well-nigh every legislative session. On the whole, while the personnel of the legislature is not as unrelievedly black as it has been painted by some observers, there is great room for improvement, which must begin with active interest by every honest citizen in the election of good legislators.

Qualifica-
tions of
average
legislator
for his
duties

To bodies thus constituted are intrusted powers of lawmaking more numerous and more important than to

**Powers of
the legisla-
ture**

any other agency of government in the United States. Congress has only certain powers, very strictly defined by the Constitution of the United States. All other powers, except such as are specifically forbidden to the states by that instrument, belong to the states and, save for the limitations of their constitutions, to the state legislatures. City governments are the mere creatures of the state, and while in a few states constitutional provisions give them a certain degree of independence of the legislature, it is still substantially true that every power which they exercise is the gift of the legislature. In most states the legislature may even abolish them as self-governing communities. What is true of cities is true in even greater degree of counties, townships, and towns.

Perhaps the greatest power possessed by the legislature is that of determining the laws which affect the ordinary relations of one citizen with another, — such as the law relating to contracts between individuals, the special rules relating to corporations, the law regulating the use of bills of exchange and notes, the law fixing the liability of one individual for injuries inflicted upon another or upon his property, the law affecting the sale or exchange of commodities, and the rules for the sale and descent of property. There is not a citizen however humble who has not occasion to bless or curse such laws, according as they are good or bad. Next in order come those laws which define crimes, or in other words, those wrongs which society sets itself deliberately to punish. Closely allied to these two sorts of lawmaking is the power which the legislature has to prescribe the rules which shall be followed in the trial of civil and criminal cases.

The legislature also has the power to pass such laws as may be necessary for the protection of the lives, health,

and morals of the people, even when such laws deprive citizens of some of the rights guaranteed them by the Constitution of the United States. This is known as their police power. They may create officers to carry out such laws and any others which they may enact. They determine the number and the compensation of state officials in so far as these matters are not determined by the Constitution. No taxes can be laid or appropriations of money made without their consent, and in this way alone every other organ of the state is at their mercy. It would, indeed, be easier to say what they cannot than what they can do, as they are held to possess all possible powers except such as are expressly forbidden them by the Constitution of the United States and of the state.

We have discussed in an earlier chapter (Chapter VII) the limitations imposed upon their power by the United States Constitution. The earliest state constitutions contained, as we have seen, what were known as "Bills of Rights," which placed beyond the reach of the legislature what were considered to be the more fundamental rights of man, — such as the right to be unmolested in one's life, liberty, and property, except by due process of law; the right of trial by jury; the right to speak or print without previous censorship; the right of petition and assembly; the right to bear arms, etc. Frequently, also, there were prohibitions of *ex post facto* laws, bills of attainder, and other forms of legislative activity which the colonists had found troublesome. Such a Bill of Rights was at first almost the only limitation imposed by the state constitution on the power of the legislature. In the later documents it still remains among the more important restrictions.

**Limitations
of the Bill
of Rights**

The changes in economic and social conditions since

the beginning of the nineteenth century have much altered the effect of some of these provisions. Take, for example, the one first mentioned. Originally intended as a protection for the weak individual, it has become the almost impregnable bulwark of corporate oppression. The courts have interpreted "due process of law" in such a way as to prohibit practically all changes in the rights or liabilities of individuals or corporations, even by the most solemn action of the legislature. A freedom of the use of property which in individuals is perfectly harmless, may in the case of great corporations controlling vast aggregations of capital be highly dangerous. This clause of the Bill of Rights, however, stands in the way of their proper regulation.¹

**Other re-
strictions**

The later constitutions, as a result of popular distrust of the legislature, have been made so long and detailed as to include many matters which are thereby withdrawn from the jurisdiction of the legislature. Certain other restrictions on the power of the legislature have been

¹ "Take the *Braceville Coal Company Case* (127 Ill. 66), in which the Supreme Court of Illinois held that a law requiring the payment of wages weekly by a certain class of corporations violated the liberty of and denied the equal protection of the laws to the corporations affected. This, in the face of the well-known fact that the deferred-wage systems of many corporations reduce their employees to a condition of practical peonage. The interpretation of 'due process of law' has been equally productive of injustice. The most flagrant instance, perhaps, is the decision in *Ives vs. South Buffalo Railway Company* (201 N. Y. 271). The legislature of New York had adopted an act providing for the payment of compensation by employers to employees for injuries received in certain hazardous occupations, without reference to the negligence of either party. The Court of Appeals declared unconstitutional this change in the basis of liability for damages, on the ground that it deprived the railway company of its property 'without due process of law.' The law had been solemnly enacted. The question of whether anything, and if so how much, was to be paid as damages was to be settled by a judicial process. There was no arbitrary seizure of any one's property, merely a new burden put upon property; and to do this in any way whatsoever was, in the opinion of the court, not due process of law. If men or corporations can acquire by long usage a property right in a given liability for damages, the law has reached an alarming condition of fixity." — T. H. Reed, *Government for the People*, p. 165.

added from time to time.¹ The most important is that against special legislation. There are many matters which, affecting only a particular locality, individual, or group of individuals, can be dealt with best by a law not of general application. The power to pass such laws is capable of great abuse, and its capabilities in this direction were in many instances strained to the utmost. The result is that almost every state now forbids special and local legislation on certain subjects set forth at length in its constitution. We shall see that this sort of restriction is especially important with regard to the formation and control of city governments.²

SUGGESTIONS FOR FURTHER STUDY

The best single reference is BEARD, pp. 516-532. See also his *Readings*, pp. 457-466. ORTH, SAMUEL P., *Our State Legislatures*, "Atlantic Monthly," December, 1904 (also in REINSCH, *Readings on American State Government*, pp. 41-56), is a most illuminating discussion of the personnel of the legislature. BRYCE, chs. xl, xlv, and xlv, will be found helpful and suggestive in connection with this and the following chapters. See also REED, pp. 83-86.

¹ At one time several states and many localities rashly appropriated public money or lent the credit of the state to assist railroads and other business ventures. Unfortunately they were in some instances brought to the verge of bankruptcy amidst circumstances of great scandal. As a result, in the new constitutions a provision such as this not infrequently occurs: "The legislature shall have no power to give or to lend, or to authorize the giving or lending of the credit of the state, or of any county, city and county, city, township . . . in aid of or to any person, association or corporation." . . . (Constitution of California, Art iv, Sec. 31.) Appropriations for sectarian purposes have also been specifically forbidden, as have a variety of practices peculiar to particular states.

² The vigor of such restrictions is mitigated by the practice of "classification." Laws to be "general" need not apply to all persons and all circumstances. The word "general" comes from *genus* and relates to a whole "genus," or kind, or in other words to a whole class or order. Hence a law which affects a class of persons or things less than all, may be a general law. Sometimes the classes are very minute and the distinctions drawn between them are of a hair-line character. How far the legislature can go in this direction depends on the courts. An extreme example of classification is that employed for counties in California, where there are fifty-eight classes, one for each of the fifty-eight counties of the state.

Most states publish a manual of the legislature, which, besides the rules of both houses, gives a brief biography of each member, the legislative districts into which the state is divided, etc. (Apply to the secretary of state for a copy.) Study with great care the terms, qualifications, districts, etc., of your own legislature, and the character of its members. Tables showing salaries, terms, sessions, etc., of state legislatures may be found in the World Almanac.

For the use of teachers, see REINSCH, P. S., *American Legislatures and Legislative Methods*, pp. 126-158 and 196-227.

Topics:

To find out and tabulate the age, occupations, education, and previous political experience of the members of the legislature of your state will occupy the attention of several students. The restrictions imposed by the constitution on the legislature will also furnish several topics.

CHAPTER XII

THE PROCESS OF LAWMAKING

THE making of laws is, for the uninitiated, shrouded in mystery. The average person of intelligence is satisfied to know that laws are produced in some incomprehensible manner by the legislature. Even a thorough study of the rules of the legislative bodies will not explain the real inwardness of lawmaking. It is the purpose of this chapter to describe how laws are really made.

A mysterious process

It is obvious upon a moment's reflection that no considerable body of men — such a body, for instance, as composes the typical state legislature — can spontaneously come to agreement on any but the simplest of propositions. Now laws are seldom simple either in their purpose or in the language in which they are expressed. Frequently they cover many printed pages and deal in great detail with complicated and abstruse matters. It is clear, then, that laws must originate with individuals, or at the most with very small groups of men who have given close attention to the same subject. Of course, every member prepares and introduces bills on those subjects in which he may be specially interested. Often measures are prepared by private individuals or organizations interested in their passage and then given to some member of the legislature to introduce. The complacency of legislators in thus accepting bills for introduction has become proverbial. It is not unusual for them to father bills which they do not understand or have not even taken the trouble to read. Besides the bills of private origin there are the administration or party measures,

Must originate with individual or small group

usually prepared by some of the more experienced legislators or by state officers. More rarely a bill will be prepared by a committee as a substitute for some measure before them, and occasionally a very important matter is referred by the legislature to a "hold-over" committee to work up in the interim between sessions.

**Legislative
reference
bureaus**

There can be no guarantee that measures so variously originated are properly drafted. They are drawn in most cases by amateurs, who may not understand the subject which their legislation will affect nor the way in which its language will be construed by the courts. The result is that we have on the statute books of all our states a great many loose, ineffective, and even positively pernicious laws. The most significant effort to correct this evil was begun with the establishment by Wisconsin, in 1901, of a "Legislative Reference Department" under the direction of the board of state library trustees. This department, very competently manned and working in close connection with the University of Wisconsin, makes special investigations of the subjects which are to be treated by the legislators. It has on hand in convenient form information for every member, from the man who wants material for a five-minute speech to the man who is preparing an important and complicated measure. It ~~also undertakes to draft bills~~ to the order of any member, thus insuring that the bills introduced shall be satisfactory in form as well as in matter. Similar departments which have been established in other states have done much to improve the character of legislation, and on the whole the outlook for improving by this means the quality of legislation is bright.

We have seen that the initiation of bills is in the hands of individuals, frequently of private individuals. The part of the legislature in lawmaking is not to originate,

but to criticize and eliminate. To secure a careful and honest exercise of this function is the object of the procedure of lawmaking as prescribed in constitutions, statutes, and rules of legislative bodies. This procedure is pretty much the same in every state, so that one description may serve for all.

**Legislative
procedure**

Bills are ordinarily introduced by dropping them into a box or handing them to a clerk, — in other words, by putting them into the custody of the house. Introduction from the floor is still possible and is used to a considerable extent in some states. At the appropriate period in each daily session, the bills handed in are read by title by the clerk and referred by the presiding officer to a committee. The reading of the title by the clerk is called the “first reading” of the bill, and all bills are as a matter of course “read a first time” and referred to a committee for detailed consideration. Before the bill actually goes to the committee, it is printed and placed on the files of the committee and of each member of the house. The official copy of the bill is put in a jacket with blanks for noting its progress, and retained by the clerk. An entry of the title of the bill and its reference is made in the journal. The bill is given a number, which is printed at the head of the bill and used afterwards to identify it.

**Introduc-
tion, first
reading,
reference,
and printing**

Each house is divided into a number of standing committees, to which bills bearing on particular subjects are referred. The number of committees varies from state to state, — the largest number in any one house being sixty-eight in the lower house of Kentucky, and the average about forty. It is usual for each house to have its own set of committees, quite independent of the committees of the other. The senate committees are in general much less numerous than those of the lower house.

**The com-
mittee
system**

In several states, however, considerable use is made of joint committees. Massachusetts and Connecticut use them almost entirely. The advantage of the joint committee is in the saving of time necessarily lost in putting the same bill through two committees, and in the lessened chance of the two houses taking divergent views with regard to important legislation. Committees are always made up of an odd number of persons, and their numbers vary from three to over twenty. Every legislator is a member of at least one committee.

**The work of
committees**

In every legislative body many more bills are introduced than can by any possibility be considered. It is not unusual for over twenty-five hundred measures to be brought in during a single session of a state legislature. Some method has to be employed to sift the good from the worthless or bad and to determine what measures shall actually receive the consideration of the house as a whole. This is the work of the committees. Most bills "die" in the hands of the committee to which they have been referred. The chances of the ordinary bill are, however, very good once it has been reported favorably by the committee. Toward the end of the session bills come from the committees in great numbers and much more often than not are adopted on the strength of the committee's recommendation. The committees, therefore, are arbiters of the fate of most bills.

Hearings

The committee usually gives to any party interested in a bill which is before it an opportunity to be heard. These committee hearings are one of the most valuable of the processes of legislation. Least important, though most spectacular, are the great public hearings conducted by organizations pushing or opposing bills of wide popular interest, such as those affecting the liquor question. These sometimes bring to the capital many hundreds of

friends or opponents of the measure in question, who crowd the building and listen to not a little impassioned oratory. Except as an expression of public sentiment, wherein they may be positively deceptive because of the ease with which a crowd can be "worked up," they are resultless. Little light or wisdom is forthcoming from excited speakers on such occasions. The ordinary hearing, however, serves the double purpose of informing the committee of the views of the interested parties and of the opinions of experts as to the details of the measure. The use of hearings has been carried farther in Massachusetts than anywhere else. There hearings are habitually attended by many of the leading men of the state, who are listened to with respect. They sometimes have gone so far as to take a vote of those present, as a guide to the deliberations of the committee. There are many who say that the excellence of Massachusetts legislation in numerous lines is due to the thoroughness of the hearings out of which it is evolved.

Committees do not act at hearings or public sessions. They deliberate upon and determine the fate of bills in "executive" or private sessions. Sometimes they go through the bills on their files in order, and such as they are not ready to vote upon are "passed." At other times members of the committee call up particular bills for consideration. The chairman of a committee has great power, in that he can usually insist on a measure being voted on or permit it to be "passed" indefinitely. Of course this is not true when a strong majority of the committee are opposed to him, a situation which is not likely to occur. The degree of secrecy of these meetings of a committee differs from state to state. In some it is very strict, as for example in New York, while in others, like California, newspaper reporters are permitted to be

**Committee
secrecy**

present and the votes of the individual members are always given out. The latter practice is infinitely better than the former. The best safeguard of good conduct on the part of public officials is that they should never be able to act in the dark, where they may escape responsibility for the results which follow. If a committee of eleven members can decide the fate of a bill in absolute secrecy, they may individually tell their constituents any story they please as to their votes in the committee, without fear of detection. In this way the committee may become a dark corner in which legislative crimes are committed.

**The report
of the
committees**

The great majority of bills, as we have seen, die in committee. They die there because the committee never acts upon them. In some legislatures the committees practically never report any bills except those which they recommend for passage. A committee may, however, report a bill with a recommendation that it do not pass, or without any recommendation at all. And in some legislatures such reports are not uncommon. The committee may also report a bill with amendments. The report of the committee is made by the chairman and may contain its recommendations as to several bills. The proper entries are made on the journal and on the official copy of the bill, and if there are no amendments, its number and title are listed on what is known as a "file" or "calendar" in the order of its report. If amendments have been made, it must be reprinted and is listed only when it returns from the printer. The file or calendar which is printed and supplied to each member is the basis for the order in which the bills are next taken up by the house itself. A committee may by vote of the house be discharged from further consideration of a bill and the bill thus be brought directly before the house. This is

very rarely done. The whole virtue of the committee system consists in respecting the committee's decisions; otherwise they could not efficiently help in sifting measures.

The Speaker of the house of representatives always appoints the committees in the lower house. In the senate they are usually appointed by the president (frequently the lieutenant-governor), but sometimes by some other person designated by the body, or by the body itself. His power of appointing committees gives great power to the Speaker. As the important work of the legislature is done in committee, the fortunes of the individual legislator are determined by the committee appointments the Speaker gives him. He can also influence legislation by the construction of the committees. The Speaker, assisted in some cases by the leading men of the body, his associates on a rules committee which controls the order of business, or the chairmen of important committees, directs the policy of the house. The party caucus, a meeting of the members of a particular party, is sometimes used to decide the party attitude toward a measure. A member attending a caucus is in honor bound to abide by its decision.

**Power of the
Speaker**

We have seen that, coming from committee, a bill is placed upon a list of the measures, known as a file or calendar. The next stage is known as the "second reading," and the calendar on which the bills are placed on coming from committee is known as the "second-reading calendar." When the house reaches the time allotted in its order of business for that purpose, the clerk begins calling the bills on the second-reading calendar. If the member who introduced the bill is not ready to have it come up at that time, he asks permission to have it "passed," retaining its place on the calendar. The rules of most legislatures permit of "passing" only a time or two, and

**Progress of
bill after
report**

if not then voted on the bill goes to the bottom of the list. If the bill is not "passed," the question before the house is, "Shall the bill be read a second time?" and a majority of those present and voting is sufficient to advance the measure to the next stage, that of third reading or final passage. It is placed on a third-reading calendar and brought to a vote in the manner described above for second reading. In many of the states a majority of all the members elected to the house must be obtained, in order finally to pass the bill. It is customary to require that the final passage of bills be by roll call, each member answering "aye" or "no" as his name is called by the clerk. At other stages the "ayes" and "noes" may be required by a very small proportion of the members, — usually one fifth or one tenth, but sometimes even smaller, as in the California assembly, where three are a sufficient number for this purpose.

The three readings

The custom of having three readings of a bill, which is the basic principle in our legislative procedure, grew up in the English Parliament in the days before printed bills were even dreamed of. It was intended to give protection against the hasty passage of a law before the sober judgment of the house might become aware of what was involved in the measure. With the introduction of printing, the necessity of actual readings disappeared, but they were retained, as stages in the progress of a bill, for the purpose of giving pause to the hasty or ill-considered creation of laws. For the protection of the public, many state constitutions require that there shall be three readings on three separate days, some method being provided for avoiding this restriction in case of emergency. The readings have, however, become purely fictitious. Even in those states where a provision for the actual reading of bills still lingers in the constitution or the rules

of the legislature, the clerk mumbles over a few sentences or simply reads the last section before going on to call the roll. A member, however, who desires to obstruct the work of the house may by his objection force the bills to be read in full. It is to be hoped that such an opportunity for obstruction will be everywhere removed.

It is worthy of note that a great part of the bills passed in our legislatures are passed by unanimous consent, the roll being called only as a matter of form. In the latter days of each session the consideration of all measures on the calendar is an obvious impossibility. Unanimous consent is then resorted to, to pass bills out of their order and under a suspension of the rules. As each member has bills which may require unanimous consent, he will not object to the bill of another, bad though he knows it to be, for fear of the objections which that other member might raise to his bills. The only escape from this evil seems to be to give to some committee of the house the power given in the New York assembly to the rules committee, to make up the working calendar during the closing days of the session. Experience has proved that there is grave danger in the possible despotic use of this power.

**Unanimous
consent**

Having passed its third reading, the bill is, after being signed by the presiding officer, ready for transmission to the other house. There it passes through the same process as in the house of its introduction. The only exception to this rule is that when a bill exactly identical has made some progress in the second house, it is possible to substitute for it the measure just received from the other house. This makes it a common practice to introduce bills in both houses with the idea of gaining time. If a bill becomes a law, it is usually known by the name

**The bill
after
passage**

of the member who introduced the bill which actually passed both houses. It is not enough that identical bills

SENATE, No. 270.

STATE OF NEW JERSEY.



AN ACT to authorize private secondary schools and institutions of learning incorporated and existing under and by virtue of an act of the Legislature of New Jersey to elect one or more non-resident trustees;

1 WHEREAS, Certain secondary schools and institutions of learning have been incor-
 2 porated and exist under and by virtue of an act of the Legislature of New
 3 Jersey entitled "An act to incorporate societies for the promotion of learning
 4 (Revision)", approved April ninth, one thousand eight hundred and seventy-
 5 five, and the several acts supplemental thereto and amendatory thereof, which
 Title and opening lines of a legislative bill as finally passed and ready for
 delivery to the governor for his consideration.

pass each house, the same bill must pass both. When a bill has passed one house, it is reprinted, sometimes on larger paper and with suitable provision for the signatures of the presiding officers. This is known as the "engrossment" of the bill.

The part of
the governor

After the two houses have acted upon it favorably, the bill is delivered to the governor, who, usually by his private secretary, gives a receipt stating the time the bill was received. This is important, because the governor has ten days, and in some of the states less time, in which to sign the bill or return it to the house in which it originated, with his reasons for not signing it. In determin-

ing this period, the day of delivery and Sundays are not counted. In many states, in order to give the governor a fair chance to consider the bills which are rushed through in great numbers in the last days of the session, he is given a period of sometimes as long as thirty days in which to sign bills which reach him in the last ten days of the session. These latter bills fail unless the governor signs them; whereas the bills which reach him earlier become law if he does not return them within the time limited by the constitution. When the governor signs a bill, he delivers it to the secretary of state, and if it becomes a law because of his failure to act upon it, he is obliged to certify that fact to the same officer. The bills which he vetoes by returning them with his reasons to the house in which they originated, are delivered into the custody of the house and become a part of its records. When a bill reaching him at the close of the session is permitted to die for lack of his signature, he is said to have "pocketed" it, and the privilege of so killing it is called the "pocket veto." A few states do not allow this, but require the bills to be returned to the originating house at the beginning of the next session.

Bills seldom complete their course through the legislature without amendment. They may be amended at practically any stage. A committee may amend the bills before it, and this power goes to the extent of drawing substitutes for one or more bills which have been referred to it. They may be amended on second reading and on third reading, except that in the latter case the provision in force in several states, that the bill must be printed and on the desks of the members for a certain time before final passage, necessitates a delay of varying length. After each amendment, the bill must be reprinted as amended, and sometimes amendments are resorted to for

**Amend-
ments**

the simple purpose of wearing out the friends of the bill or preventing its passage before adjournment. If the senate amends a bill of the lower house, or vice versa, the bill, with the amendments, goes back to the house in which it originated, which votes either to concur or not to concur in them. If it votes to concur, that ends the matter and the bill goes to the governor. If it votes not to concur, the bill goes back to the house which made the amendments and it votes on the question of receding from the amendments. If it votes not to recede, a conference committee is then named by the presiding officer of each house, which reports to the two houses its recommendations as to what action should be taken to bring them into harmony. Its report is usually adopted. After a bill has gone to the governor, there is no further opportunity for amendment.

15 acknowledgment and proof of deeds for real estate in the State of New Jersey,
16 together with a true copy of the resolution passed by the board of trustees or other
17 governing body, certified by the secretary or clerk thereof, in the office of the Secre-
18 tary of State.

1 2. Immediately upon filing said acceptance and copy of said resolution, the
2 board of trustees or other governing body of said institution may contain one or
3 more non-resident natural persons otherwise qualified to act and duly elected in the
4 manner in which the members of said board of trustees or other governing body
5 now are.

1 3. This act shall be deemed a public act and shall take effect immediately

Approved 1 April, 1912
Woodrow Wilson
Governor

Ending of the legislative bill begun on page 142. The governor's signature makes the act a law, ready for filing with the secretary of state.

The discussion which most bills receive from the house as a whole is rather perfunctory. A brief explanation from the member introducing it is usual, and in a majority of cases the house is then ready to vote. Certain measures, especially those involving political issues or matters in which the public is greatly interested, call forth a good deal of speech-making. A large part of it, however, is for the purpose of enhancing the speaker's reputation with the galleries or with the "folks at home." Very little of it is for the genuine purpose of influencing the members themselves. Many of the members study the bills conscientiously, making much use of the state library or of the legislative reference bureau. They talk among themselves in the lobbies and about the hotels, and a good deal of convincing argument is brought into play in these conversations. They listen to and sometimes adopt the ideas of the "lobbyists," persons who attend upon the sessions of the legislature for the purpose of advancing their own views or those of the interests employing them. The legislative chamber, the committee rooms, and the surroundings of the legislature are a vast melting pot for ideas on legislation. Of all the forces at work, however, formal discussion on the floor of the house is the least effective. Practically every member has made up his mind on every important measure before the debate begins. No sane person, however, would advocate abridging in any way the freedom of discussion which prevails. Its possible value as a means of protest against misgovernment is beyond calculation.

The character of debate

The halls in which our legislatures meet are, in general, capacious and dignified. Indeed, size and beauty have been sought at the expense of efficiency. Many of them are so large that only trained public speakers can make themselves heard throughout their whole extent. The

Facilities for work

Speaker's desk, elevated above the floor, stands opposite the main entrance. Below it are the desks for the clerks, and usually in a good location toward the front are accommodations for newspaper reporters. Each member has a desk, which is assigned each session by lot or on the basis of length of service. At these desks the members read, write, or dictate their letters and do other things which detract from their attention to what is going forward. Back of the chairs, but a considerable distance from the rear wall, is a railing. Immediately in front of it are chairs reserved for the friends of members or persons who may be granted the privileges of the floor by the house. The space back of the rail is known as the "lobby," whence the term "lobbyist." Large galleries, open to the public, insure publicity to the proceedings. The galleries and lobbies may, however, as a safeguard against disorder or intimidation on the part of the spectators, be cleared at any time on the order of the presiding officer. Numerous committee rooms are provided in the capitol building, but they are usually insufficient easily to accommodate the crowding activities of the legislators. The chairmen frequently use their committee rooms as offices; the other members have none.

Besides the Speaker and the clerk and his assistants, each house employs a sergeant-at-arms, who is the Speaker's agent in preserving order and in serving warrants for the apprehension of absent members, or subpoenas for witnesses desired to appear before the house or its committees. He also acts as paymaster. Each committee is, in the richer states, supplied with a clerk. A corps of stenographers, not numerous or well organized, is also supplied for the use of members. Some of the worst scandals in legislative annals have occurred in connection with the distribution of this "patronage." All

together, we do not provide our legislators with the equipment and assistance with which business corporations find it worth while to supply their employees.

For a long time the procedure of legislatures was entirely unregulated except by their own rules. The rules were imperfect, and even the slight protection they afforded was destroyed by the action of the courts in holding that a bill passed in violation of the rules was nevertheless a law.¹ Many tricks were played upon the public. A bill would be introduced with a title which sounded innocent in the extreme, and slip through, although the body of the measure was something entirely different. Bills would be introduced containing strange and irrelevant provisions. Appropriations for unworthy objects would be tacked upon others highly meritorious. Amendments of unexpected effect would be introduced at the very end of the session. Bills which would never have stood the light of publicity would be introduced at the last moment and hurried through all their stages by unanimous consent. To guard against these evils, many of the later state constitutions have contained provisions requiring :

1. Bills to be read on three separate days.
2. Titles to be expressive of the contents of the bill.
3. Changes in existing law to be clearly indicated as amendments.

¹ The legal principle on which this decision was based should be noted, because it grew out of that principle of the separation of powers which we have previously seen characterized our early state constitutions. It was that the courts could not properly scrutinize the internal arrangements of a coördinate branch of government. The signature of the presiding officer, certifying that the bill had been duly passed, was conclusive on the judiciary. This principle makes possible one of the strange practices of legislative bodies. As the hour decided upon for final adjournment by resolution of the two houses approaches, if the work of the session is not completed, the clock is stopped and not started again until the house is ready to adjourn. It may legally remain quarter of twelve for hour after hour.

Constitutional safeguards against legislative misconduct

4. But one item of appropriation to be included in a single bill, except the general appropriation bill.

5. Bills to be printed before final passage.

6. Yeas and nays on final passage.

7. Bills not to be introduced in the latter part of the session except with the approval of house.

A bill passed in violation of any of these provisions will be held void by the courts, because it conflicts with the constitution.

The initiative and referendum

There have been recently added to the existing processes of lawmaking in certain states the initiative and referendum. The first enables the people by petition to initiate directly measures which on receiving a popular majority at a subsequent election become a law. They may also suggest measures to the legislature which if not adopted must be referred to the people. The second enables the people by petition to cause the submission to themselves at an election of any measure passed by the legislature. For this purpose all but a limited class of measures do not go into effect until ninety days after passage. If a petition is filed against any one of them, the operation of the law is suspended until the next election, at which time the popular majority settles its fate.¹

Limitations of popular lawmaking

To understand the proper limitations of the initiative and referendum, we must go back to the principle laid down at the beginning of this chapter, that measures can never originate except with individuals or very small groups of individuals. If this reduces the legislature simply to a revising and criticizing body, how much more limited must be the legislative capacity of the great mass

¹ The details of the provisions for the initiative and referendum vary very much from state to state, and it must be studied in the constitution or laws of your own state. The underlying principles, however, are everywhere the same.

of the people. In the very nature of things, the people cannot even revise and criticize measures put before them, — they can simply say yes or no. It is impossible, therefore, to make direct legislation a substitute for lawmaking by representative assemblies. Direct action by the people can be valuable only as a check on the legislature, — a safeguard against misrepresentation. So understood, the initiative and referendum are very valuable aids to popular government. Looked at in this way, they are essential to complete democratic control.

The referendum is clearly no more than a negative check. It is conservative in its tendency, preventing action rather than producing it. It is, of course, capable of being used against good as well as against bad measures, a point which some of its more earnest advocates forget. The fact that a small petition will hold up any measure for as long as twelve or fourteen months, irrespective of the ultimate decision of the people, must not be lost sight of. There is, however, little disposition to overuse the referendum. So far as constitutional amendments and a wide variety of state and local questions are concerned, it is a natural American growth, and the people have been accustomed to its processes for generations.

The initiative, on the other hand, is far more radical. Any change in law or constitution can be made by it. It is no wonder, then, that everybody with an "ism" or an interest to advance uses the initiative. The extent of its employment in certain states is well illustrated by the California ballot of 1914, which included forty-eight propositions to be voted upon, many of them relating to very complex or very trivial matters. The text of the amendments, and the arguments pro and con sent to each voter in accordance with law, made a considerable volume. There can be a "long ballot" of propositions quite as

Use of the
initiative
and refer-
endum

dangerous as the "long ballot" of candidates. Abused in this way, the initiative may be productive of bad results. It should be reserved for the passage of vital measures neglected by the legislature. If so reserved, it may be from time to time of inestimable service.¹

SUGGESTIONS FOR FURTHER STUDY

I. *Legislative Lawmaking*

First-hand materials for the study of the legislature are abundant. Every legislature publishes its rules, either in the manual referred to in the suggestions for the last chapter or separately. These may be obtained from the secretary of state or the clerk of either house. Copies of bills may be obtained in the same way. It may be possible on payment of postage to have all the bills sent you at intervals during the session of the legislature. Finally, a visit to the legislature during its session will be found very profitable by the class in visualizing its proceedings. A great deal of descriptive material can be obtained from the legislative reference bureau if one exists in your state.

There are a multitude of good secondary references on this subject. RAY, pp. 390-451, is exceptionally good. BEARD, pp. 532-546, and *Readings*, pp. 466-487, are full of good material. REINSCH, P. S., *Readings on American State Government*, pp. 61-84, contains in convenient form some very good articles. REED, pp. 86-89, enumerates some of the deceptions formerly common in legislatures. BRYCE, chs. xl, xlv, and xlv, will be found useful.

For teachers: REINSCH, P. S., *American Legislatures and Legislative Methods*, pp. 159-195, 228-330. The latter reference especially covers matters which are nowhere else comprehensively discussed. MCCARTHY, CHARLES, *The Wisconsin Idea*, particularly pp. 194-232, is the work of a man who has given legislatures and legislation more scientific study than any other man in America.

¹ The Ohio constitution of 1912 provides for the submission of a measure to the legislature on a very small petition. If the legislature amends or rejects the measure, an additional petition will secure the submission of the measure in its original shape to the people. This is probably the best possible form of the initiative for our American conditions. It gives a chance for amendment and adjustment of details restrained by the possibility of submitting the whole matter to the people.

II. *The Initiative and Referendum*

BRYCE, ch. xxxix, gives a very illuminating criticism. BEARD, pp. 461-469, and *Readings*, pp. 413-431, are useful. See also REED, pp. 137-160. LOWELL, A. L., *Public Opinion and Popular Government*, contains more up-to-date material than any other book. For extended first-hand material see BEARD AND SCHULTZ, *Documents on the State-wide Initiative, Referendum, and Recall*. The pamphlets published in Oregon and California and other states may be obtained on application to their respective secretaries of state.

For teachers: OBERHOLTZER, E. P., *The Initiative, Referendum, and Recall in America*; MUNRO, W. B., *The Initiative, Referendum, and Recall*; EATON, C. A., *The Oregon System*; CLEVELAND, F. A., *Organized Democracy*, pp. 273-355; HAINES, G. A., *People's Rule in Oregon*, "Political Science Quarterly," vol. xxvi, p. 32, and *People's Rule on Trial*, "Political Science Quarterly," xxvii, p. 18. MCCALL, S. W., *Representative against Direct Government*, "Atlantic," vol. cviii, p. 461, and BUTLER, N. M., *Why Should We Change Our Form of Government?* give the conservative point of view. WILCOX, D. E., *Government by All the People*, gives the radical point of view.

Topics:

The Legislative Reference Bureau (of your own state).

Constitutional Limitations in Your State.

Order of Business in Legislature.

Passage of a Bill.

Veto in Your State.

Study the actual provisions of the constitution and laws of your own state, if it has the initiative and referendum; the character of questions submitted and the results of the popular vote on them, using sample ballots, pamphlets, etc.

CHAPTER XIII

THE STATE JUDICIAL SYSTEM

Power of
the state
courts

WE have seen that the object of the judicial department of government is to provide an orderly method for the settlement of those disputes which arise out of the relations of individuals and for the determination of the guilt or innocence of those who are accused of breaking the laws which the community has established for its protection. In this country, by far the larger part of both these tasks falls on the state judiciary. The judicial power of the United States is limited to those matters which are specified in the federal Constitution. That of the state includes some of these same matters, and everything else; hence the state requires a more elaborate system of courts than does the United States.

Civil and
criminal
law

When a court is engaged in settling disputes between individuals, it is exercising civil jurisdiction. It does this by protecting the rights of individuals, giving them damages or some other remedy for the wrongs which they suffer at the hands of other individuals. Every individual has the right to be free from personal injury or the restraint of liberty, and to possess and enjoy his property. Generally speaking, any invasion of these rights is a wrong which entitles the aggrieved person to appeal to the courts. When the wrong is of a character to affect the whole community, it is treated as an offense against the community, which seeks, not redress for the person offended, but punishment for the offender. Such offenses are called "crimes" and the branch of law which defines them is known as "criminal law." A person who

is injured may forego the privilege of obtaining redress from the wrongdoer and may even stop the proceedings which he has begun. Where a crime has been committed, the injured party has no power to avert the punishment of the offender by forgiving him. Sometimes the same act constitutes both a crime and a civil injury.

For the disposition of these two kinds of business, the states have been obliged to establish series of courts, which bear a general resemblance to one another although they differ somewhat in details of organization and a great deal in their names. For the disposition of the smallest kind of cases, which are by far the most numerous, there exist courts of very limited authority. In the country they are usually held by justices of the peace, of whom there is at least one to a township. They may try civil cases involving not more than fifty or one hundred dollars, and petty misdemeanors, the punishment of which is a small fine or a few days in jail. Most of these cases are disposed of "summarily," — that is, without a jury, — but a jury, frequently of six instead of the traditional twelve men, may, in many states, be demanded by the accused in a criminal and less often by either party to a civil case. The justice of the peace usually has power to examine persons accused of more serious crimes and commit them to jail pending the action of the grand jury. In cities these duties are frequently divided between a municipal court, which takes the civil cases, and a police or magistrate's court, which disposes of criminal matters. Justices of the peace are seldom versed in the law, and the system is coming to be recognized as a bad one. They are usually paid by fees and are sometimes the tools of the lawyers who bring cases before them. A few well-paid judges holding court from village to village through the county would much better serve the ends of justice.

Justices'
courts

**Trial
courts**

The trial of the more important cases is intrusted to courts organized by counties or larger units. In most states there are county courts possessing civil and criminal jurisdiction. In some states this jurisdiction is unlimited as to the amount in controversy or the seriousness of the crime. In other states a still higher trial court, called a "superior court," "circuit court," or, in New York, "supreme court," takes up the more important cases.¹ The county court is sometimes known by that name, sometimes as the "court of common pleas," or "district court." Cases are tried in both classes of trial courts by a single judge and a jury. The privilege of a jury trial may be waived by the parties in a civil case, and there is no such privilege if the proceeding is in equity.² Each trial court is provided with a clerk, who is frequently also the clerk of the county, although in some instances the clerk of the court is elected for that particular purpose or appointed by the judges themselves. It is the duty of the sheriff of the county to attend all sessions of the court within the county, either personally or by deputy, and to serve the "processes" or orders of the court.

To each of the principal courts for the trial of criminal cases there is attached a public prosecutor. He is usually

¹ In New York, where this system exists, the county court has jurisdiction in civil cases involving two thousand dollars or less, and in all criminal cases where the charge is not murder, except in New York and a few other counties, where it includes even murder.

² This is almost the only reason for maintaining the old distinction between law and equity, the two jurisdictions having now been fused in practically all states. Formerly, in England and the United States law and equity were administered by separate courts. Equity grew up through the reference to the king's chancellor of cases in which the law offered no prospect of justice. Equity recognized some rights denied by law, such as the right of the mortgagor to the value of the mortgaged property in excess of his debt. It gave especially through the writ of injunction an effective remedy where the law was practically powerless. For example, the law would give in the case of continuing injury, only damages up to the time of suit; equity would forbid its continuance.



Summary disposition of cases in a police or magistrate's court.



A case being tried before a jury in a superior or trial court.

**The district
attorney**

elected by the voters of the county, but in some instances for a larger district. He is known as the "prosecuting attorney," the "district attorney," "state's attorney," "county attorney," or "county solicitor." His functions, however, are much the same in all the states. It is his duty to investigate all crimes and make up his mind whether or not a prosecution should be begun. He then presents the case to the grand jury or brings it up directly for trial by filing what is known as an "information." He conducts the trial of the accused person and ordinarily makes every effort to secure his conviction. His discretion, however, is very great, and he may decline to prosecute any case up to the time of its actual coming to trial. When a case is dropped in this way, it is spoken of as "nol prossed," from the Latin *nolle prosequi*. He may also, under a certain amount of control by the court, drop the prosecution of a case already begun. He is in fact a "quasi" judicial officer and should, although it is not always the case, be more interested in discovering the truth than in getting a conviction. The district attorney may in some states be removed by the governor, if he fails to perform his duty in enforcing the laws of the state. It is possible also for the governor to appoint a special prosecutor or deputy attorney-general to conduct the prosecution of particular cases where the district attorney is unwilling or unable to do his duty.

**Appellate
courts**

Either party to a civil case, or the defendant in a criminal case, may under certain limitations appeal from the judgment of a justice of the peace to the county court. From a county or other higher trial court an appeal may be taken only on questions of law. The decision of the judge or jury as to matters of fact is final. These appeals usually go straight to the supreme court of the state, which is sometimes known as the "court of appeals" or

the "court of errors." In some states, however, intermediate or district courts of appeal have been created, whose decision is final in most criminal and many civil cases. In all appellate courts the decisions are rendered by several judges sitting together on the "bench." A majority is sufficient to decide. State supreme courts usually consist of from five to seven members. In some an appellant has the right to demand to be heard by a full court. In others less than the full court may render a decision, and occasionally, as in Ohio, the court may be divided into two permanent divisions. Each appellate court has a clerk, who is sometimes elected by the people and sometimes named by the judges.

The selection of judges

There has been a good deal of controversy in the United States as to the best method of selecting judges. In the colonies the judges were appointed by the governor, except in Rhode Island and Connecticut, where they were elected by the legislature. Under the early state constitutions the judges were appointed by the governor with the advice and consent of his council in five states, elected by the legislature in seven, and elected by the people in one. Election by the legislature proved to be too much a matter of jobbery and log-rolling. While it still lingers in four of the first fourteen states, there is no disposition to copy it elsewhere. We have already commented upon the increase in the number of offices filled by popular election which came as part of the democratic evolution of our state governments. Every state west of the Alleghanies, except Mississippi, now elects all its judges by popular vote. Seven states in all intrust the power of making judicial appointments to the governor.

Closely associated with the question of the selection of judges are the problems which arise in connection with their tenure and salaries. In Massachusetts, Rhode

Island, and New Hampshire alone do judges hold office for good behavior. In all the other states they are chosen for definite terms of from twenty-one years for the supreme court of Pennsylvania to two for the supreme court of Vermont. The average for supreme courts is eight years, being brought up to that average by the long terms in a few states. In twenty-one it is eight or more, in eighteen it is six, and in the remainder a still shorter period. The terms of trial judges and justices of the peace are somewhat shorter, corresponding generally to the intervals between local elections. Judges are removable in all states by impeachment and in some by a joint resolution of both houses of the legislature. As a two-thirds majority of both houses is usually required for such a resolution, it is not in practice much easier to employ than the process of impeachment. The only advantage is that it can be used to remove a judge who loses his reason or becomes incapacitated by illness, without attaching to him the stigma of impeachment. As a matter of fact, judges are seldom removed by either of these means. In Oregon, California, and Arizona a judge may also be removed by popular recall. The salaries of judges are low as compared with the earnings of successful practitioners at the bar. The salaries of supreme court justices vary from \$14,200 paid to the chief justice of the court of appeals of New York to \$2500 in Vermont. From \$5000 to \$6000 is the usual amount. The judges of trial courts receive proportionately less, except in some great cities. The judges of the supreme court for the city of New York are better paid than any other judges in the United States, receiving \$17,500 a year. Trial judges in Chicago receive \$10,000.

Tenure of
office and
salaries of
judges

The method of selection, tenure, and salary of judges have had a great effect upon the character of our state

The character of the state judiciary

judiciary. The advocates of a highly paid appointive judiciary assert with justice that popular election, short terms, and low salaries have reduced the general average of our state judges below that which prevails in England and in the United States courts. It is true, especially for trial courts, that the judge is inferior in ability and legal knowledge to many of the attorneys who practice before him. The intellectual level of our highest state courts is, however, good. The dignity of the position attracts the better members of the bar, and its prominence forces the politicians to nominate men who can stand inspection. What Bryce calls "pecuniary corruption" seems very rare. Judges are more apt to be influenced by their social or political affiliations. On the whole, however, judges are freer from this sort of bias than one might expect from the frequency with which most of them have to go before the people for reelection. After all, the judges are lawyers, and their professional pride and their regard for the opinion of their fellows tend to keep them in the path of rectitude.

Our judicial dilemma

The introduction of the recall of judges into the constitution of California in 1911 precipitated a heated controversy over the whole subject of judicial appointment and tenure. The possibility that a judge might be recalled for some thoroughly legal though unpopular decision shocked the sense of propriety of many persons who had looked with complacency on the election of judges by the people. Every argument which they advanced, however, against the recall of judges was an argument against the whole theory of popular election. At the one extreme stands Massachusetts, whose judges are appointed by the governor for life and are removable on a resolution of both houses of the legislature. At the other is California, whose supreme court judges are elected for twelve,

and trial judges for six years, removable by impeachment, joint resolution, or recall.

It is true beyond possibility of denial that the law is a very technical subject, about which the layman knows little. It is clear, then, that the people are not very well equipped to discover whether a candidate has the necessary qualifications nor how he fills the position once he is elected. The qualities that make a good judge are rarely those which make a good candidate. Not only is it difficult to select by popular election well-qualified men, but it is only by offering a long term and a good salary that the best men can be induced to seek the position. There is more hope, therefore, of getting a thoroughly capable judiciary under the Massachusetts than under the California system. On the other hand, our courts possess, in the power to hold statutes void on the ground that they violate the Constitution, a power which is in its very nature political. The people have found, too, that judges, even when elected for short terms, are too prone to decide cases exclusively on the basis of ancient precedents the application of which has been rendered unjust by changing social and economic conditions. Under these circumstances it is not surprising that the bulk of the American people have insisted on an elective judiciary. We are, therefore, in a perplexing dilemma with regard to the judiciary. We cannot have both direct popular control and efficiency. One method of escape is to make the state constitution amendable by popular initiative, and this has been done in several states. The obstacle which the courts can put in the way of advanced social legislation is then so slight that, even in the opinion of the very radical, judges may safely be made appointive. Many persons will shrink from this method because they feel that it removes the element of per-

manence in our government. The "recall of judicial decisions" suggested by Mr. Roosevelt is really only a means of submitting to the people for their approval or disapproval such statutes as the courts hold unconstitutional. In other words, it is a method of making the Constitution easily amendable.

**Relation of
the judiciary
to the other
departments**

We have already seen that our state constitutions started out with the idea of the separation of powers. Each of the three departments of the government was to be independent of the others. The judiciary, however, has developed powers which are quite inconsistent with the original theory. None of the state constitutions gave in specific terms the power to the courts to hold an act of the legislature void because it was in violation of the Constitution. Nevertheless, even before the adoption of the Constitution of the United States, state courts had assumed this power. It has become the fashion with a certain class of writers to say that the courts stole it. The power, however, is inherent in the idea that the Constitution is a superior law to that made by the legislature. It was the business of the courts, according to their Anglo-Saxon notion of things, to apply the law, and in case of conflict between a higher and a lower form of law there was no question as to which they should apply. At first the courts exercised this power of vetoing the acts of the legislature shyly and with many apologies. In recent years, however, they have exercised it with bold assurance. Too frequently they have interpreted the Constitution in a narrow and technical spirit, imposing as barriers between the legislature and measures of social reform provisions of the Constitution which were originally intended for the protection of the people.

With regard to the executive department, the courts possess the power to forbid, on the application of a party

prejudiced thereby, any action which in their opinion has not the warrant of law. They can, and frequently do, compel executive officers to perform duties which are of a purely ministerial kind; that is, where no element of executive discretion enters in. They employ for the first purpose the writ of injunction, and for the latter that of mandamus. In about half the states the governor is not subject to these writs. The courts may also, on the application of the attorney-general, determine the right of any person to hold an office to which he claims to have been elected or appointed. All together, the power of the judiciary is so great as to lead to the expression that "we are governed by the courts." It must be remembered, however, that the power of the courts is almost altogether negative. Further, if the executive department fails to back up its orders, they may be practically of no avail.

An action to secure redress for a civil wrong is begun by the wronged party, called the "plaintiff," filing a statement of the injury he has suffered. If the defendant admits the facts stated, but denies that they constitute a wrong for which the law gives a remedy, he may file a demurrer. The judge settles this matter. The defendant may also answer the complaint, denying it or confessing the facts and setting up some affirmative defense. In some jurisdictions the plaintiff may then answer or demur, and so on *ad infinitum*, until an issue is joined. The case is then put on the docket or list of cases before the court, and comes up in its turn.

**Civil
procedure**

If it is a suit in equity, it is tried by a judge; if an action at law, by a judge and jury. Preparatory to the beginning of the term of court at which it is to come up, a list of jurors has been prepared under the direction of the court and a certain number of them, as determined by

**Supreme Court
New York County**

John Doe Plaintiff
against

Richard Roe Defendant

Summons. — With Notice.

To the above named Defendant :

You are hereby Summoned to answer the complaint in this action, and to serve a copy of your answer on the Plaintiff's Attorney within twenty days after the service of this summons, exclusive of the day of service, and in case of your failure to appear, or answer, Judgment will be taken against you by default for the relief demanded in the complaint.

Dated, ___ *August 5*, ___ 19*16*

___ *James Brown*, ___ Plaintiff's Attorney.

Post Office Address and Office, No. *19 Lake* Street.

NOTICE. — Take notice, that upon your default to appear or answer the above Summons, Judgment will be taken against you for the sum of ___ *100* ___ dollars, with interest from ___ *July 1, 1916* ___ and with costs of this action.

___ *James Brown* ___ Plaintiff's Attorney.

A summons, which brings the person upon whom it is served within the jurisdiction of the court specified in the summons. Failure to obey a summons renders one liable to arrest and punishment.

lot, are summoned to appear. From this body the jurors in each particular case are drawn by the clerk. The attorneys on either side may challenge a certain number of these without cause. Others may be excused if it appears to the judge that they are exempt or disqualified. The plaintiff's attorney makes an address setting forth the case he intends to prove, and follows this by calling and examining his witnesses. When he has asked all the questions he desires of a witness, it is the privilege of the attorney for the defense to cross-examine him. This is a method peculiar to Anglo-Saxon countries and is the

best means that has ever been discovered of detecting a false witness. Sometimes, however, a clever but unscrupulous lawyer can make even an honest witness seem a liar. The defendant's case is then presented in the same way. The most difficult questions which arise in the course of a trial have to do with the admissibility of evidence. The original English jury was made up of ignorant men, and it was thought that only the best evidence should be admitted to them. Therefore the English courts refused to admit any but direct evidence. The exceptions to this "hearsay rule" form the bulk of the law of evidence, and this law the judge must be able to apply almost on the spur of the moment throughout the trial. An error in admitting or excluding evidence may be ground for a new trial being granted by the appellate courts.

At the close of the taking of evidence the attorneys again address the jury. The judge then "charges" the jury; that is, instructs them as to the points of the law involved. In most of the state courts he cannot charge them on the facts, that is, discuss before them the weight that should be given to the evidence, although this has always been the practice in the English and our own federal courts. The jury retires and brings in its verdict based on the preponderance of evidence, and if they decide for the plaintiff, they also decide the amount of the damages. If after a reasonable time the jury is not able to reach an agreement, the case has to be tried over again before another jury. In most states the decision of the jury must be unanimous, but in several a verdict may be rendered by less than the whole number.

A criminal proceeding is usually begun by the arrest of the accused. This may be done by a sheriff, deputy sheriff, or police officer, without a warrant if he knows that a felony has been committed and suspects that the

**Criminal
procedure**

person in question is the guilty party. Any person may apprehend another whom he sees in the commission of a crime. In all other cases a warrant or order of arrest issued by a justice of the peace or other judicial officer is required. The accused is then brought before the justice of the peace or police magistrate, and if the offense is a petty one this officer disposes of the case. Otherwise he holds him to await the action of the grand jury. For this purpose he either commits him to jail or requires bail. This means that one or two persons of sufficient property file with the court a bond conditioned on the appearance of the accused when wanted. The court may admit the prisoner to bail in all cases except where the death penalty is involved.

The next step is usually the presentation of the case to the grand jury. This is a body of from twelve to twenty-three persons more carefully selected than the jurors for trial purposes. Sometimes there is a higher property qualification for this duty. The grand jury takes up matters presented to it by the district attorney and, deliberating in secret, determines whether there is probable guilt. If it decides affirmatively, it returns an indictment. The grand jury can also take up matters with regard to which no previous legal steps have been taken and present the probably guilty parties for trial. It is by this latter method that many of the greater criminals, such as grafters and conspirators against the public, are brought to trial. In some few states the district attorney may bring cases up for trial on a simple "information" filed by himself. This procedure is less cumbersome than the other, but it adds perhaps overmuch to the authority of the district attorney.

After indictment or presentment by the grand jury, the accused is brought into court and the charge is read

to him. He is then asked to plead "guilty" or "not guilty." If he pleads "guilty," the judge proceeds to pass sentence. If "not guilty," a jury is drawn in the same manner as in a civil action. There is generally rather more "fuss" about getting a jury in a criminal case. The attorney for the defense is apt to be very critical of the persons drawn, and to examine them at great length to see if they have any prejudice against his client. The district attorney will not be far behind. Unless a judge is very active in the performance of his

The People of the State of New York.

TO... *John Smith*

GREETING:

We Command you, That all business and excuses being laid aside,
you and each of you appear and attend before
..... *Hon. William Brown*

SUBPENA TO
APPEAR AND TESTIFY.

on the *20th* day of *July*, 19*16*, at *10 o'clock*,
in the *fore* *noon*, to testify what you
and each of you may know in a certain action
entitled John Doe against Richard
Roe

on the part of the said *John Doe* and for a failure to attend,
you will be deemed guilty of a contempt of Court, and liable to pay all
loss and damages sustained thereby to the party aggrieved, and forfeit
FIFTY DOLLARS in addition thereto.

Witness, *Hon. William Brown*

the *1st* day of *July* one thousand nine hundred and *sixteen*.

James Robinson

Clerk.

A subpoena, which is used for compelling the attendance of witnesses in court.

duty, the drawing of a jury may take a long time. The case is conducted very much in the manner of a civil case, except that the prosecution, which corresponds to the plaintiff, makes the concluding address to the jury. The accused cannot be compelled to testify, but may do so if he desires. In both civil and criminal cases the parties are entitled to orders of the court called "subpœnas," to compel the attendance of witnesses. In some states an accused person is entitled to have his witness fees paid by the public if it appears to the satisfaction of the court that he is not able to pay them himself. Attorneys also are assigned in criminal cases to poor defendants who cannot afford to employ them. In a criminal case the jury must, to bring in a verdict of guilty, be unanimously satisfied of the person's guilt beyond a reasonable doubt. It simply decides the guilt or innocence of the accused; the amount of the punishment is, within the limits fixed by the legislature, determined by the judge.

**The law's
delays**

In recent years there has been a great deal of criticism of the courts for their slowness. It has been pointed out that in civil cases, to delay justice is practically to deny it to the poor. The great corporations and accident insurance companies run upon this principle in fighting every case which they cannot settle on their own terms. They know that to protract the matter for two or three years may tire out the poor plaintiff, whose fund for lawyer's fees is necessarily small. In criminal cases it results in an increase of crime and of its corollary, lynching. Criminals are a short-sighted class of people and a small punishment very near and very certain is a more powerful deterrent from crime than the severest penalty the infliction of which is far off and uncertain. The longer the delays in criminal cases, the greater the chance of the criminal to escape. The witnesses die or move away and

the proof of his guilt is no longer forthcoming. This is one of the causes of the great proportion of crimes of violence in the United States as compared with other countries.¹ These delays are due in a large measure to the poor quality of the average trial judges in state courts. They make frequent mistakes which are the occasion of new trials. It is deemed unsafe to give them the power which is possessed by a trial judge in the United States courts. On the other hand, the technical spirit in which the appellate courts consider appeals has had a great deal to do in encouraging attorneys to split hairs with the trial courts. The situation is now somewhat better than it was a few years ago, but it is still very bad. Some of the congestion which makes it practically impossible to get a jury trial in a civil case in any great city inside of two years from the time the suit is instituted, is due to the simple congestion of population and can be remedied by more judges. There still will remain a good deal to be done by the simplification of procedure and the granting to trial courts of greater power for summary disposition of cases.

The great complication of procedure under the old common-law rules has led to attempts to simplify it by legislation. How worthy the purpose of this undertaking is known by any one who has wrestled with the problems of

Codes

¹ Professor J. W. Garner of the University of Illinois offers some statistics that are of striking interest:

HOMICIDES PER MILLION OF POPULATION	
United States	103 (1903)
England and Wales	10 (1902)
France	13 (1899)
German Empire	5 (1899)
Canada	12 (1903)

Further, but one execution is had in the United States for every seventy-five homicides, while in twenty years preceding 1904 the number of lynchings exceeded the number of legal executions by over 600. — *Crime and Judicial Inefficiency*, Annals of the American Academy, 1907.

common-law "pleading," as it is called. In some states, like New York and California, complete codes of procedure have been adopted. Far from simplifying the conduct of legal business, these elaborate codes have only complicated it. They were prepared in the first place with a haste inconsistent with good results and have been amended indiscriminately. They have themselves become the subject of interpretation by the courts, until it is easier than ever to make mistakes in procedure, every one of which causes delay if it does not actually prejudice the interests of the litigant. The only sensible practice in this regard is that of England, which leaves the making of rules of procedure to the judges of the high court of justice themselves.¹

Special courts

In many states there are special courts for those questions which arise in connection with the settlement of the estates of deceased persons and the appointment and supervision of guardians, etc. They are called "probate courts," "surrogate's courts," or "orphans' courts." It is also now the general custom to separate those cases in which children are accused of crimes or misdemeanors from the mass of criminal business, and to deal with them in a special court known as the "juvenile court." It is ordinarily a branch of the principal trial court for criminal cases.

¹ California, the Dakotas, and a few other states have endeavored to make a general codification of their whole law. These codes are incomplete and in many instances self-contradictory. Because of constant legislative patching, they no longer preserve any consistent principle. Further, they are objected to as making more keen the differences between the law of the several states which the practice of the judge-made law tended to bring into uniformity. Louisiana, deriving her law from French sources, has a code, based on the code of Napoleon, of more satisfactory quality than that of the other code states.

SUGGESTIONS FOR FURTHER STUDY

BEARD, pp. 547-577, contains an excellent chapter on this subject. See also his *Readings*, pp. 488-508. REINSCH, P. S., *Readings on American State Government*, pp. 140-207, contains some very well-selected articles. BRYCE, ch. xlii, is suggestively critical. REED, pp. 161-178, deals with the problem of reform of the judiciary. There are a few books of a distinctly popular character that may prove valuable in exciting interest. Among them are: WELLMAN, F. L., *The Art of Cross-Examination and Day in Court*; TRAIN, ARTHUR, *Courts, Criminals, and the Camorra*, pp. 1-64.

It should never be forgotten that an actual "day in court" will teach more of the detail of court procedure than a month of study. Use a visit to some court or courts to illustrate the text. Copies of documents such as warrants, writs, etc., will help.

For teachers: BALDWIN, S. E., *The American Judiciary*, gives the most comprehensive account of our judicial system. A great many books have recently appeared on the subject of the general relation of the judiciary to the people. ROE, GILBERT E., *Our Judicial Oligarchy*, and RANSOM, W. L., *Majority Rule and the Judiciary*, represent the radical view, the introductions to these books being written respectively by Robert M. La Follette and ex-President Roosevelt. ALGER, G. W., *The Old Law and the New Order*, contains very interesting chapters criticizing the courts. See also JUDSON, F. N., *The Judiciary and the People*; WHITE, WILLIAM ALLEN, *The Old Order Changeth*, pp. 197-229.

Topics:

The Courts of Your State.

Report on Visit to Police or Justice's Court.

Report on Trial of a Civil Case.

Report on Trial of a Criminal Case.

Statistics of Crime in Your City or County (to be obtained of police).

Convictions (from police court and trial court records).

The Law's Delays in Your Locality (see some good local attorney).

CHAPTER XIV

THE ORGANIZATION OF STATE ADMINISTRATION

PROFESSOR BEARD of Columbia University characterizes our system of state administration as the "apotheosis of chaos and irresponsibility." Only the limitations of the English language prevent the use of more vigorous expressions. We have already looked at this subject from the point of view of its influence on the position of the governor. We have seen that his control over state administration is incomplete, spasmodic, and ineffective except as he makes his personality felt as a political leader. We shall now see, as we proceed with the study of its various branches, how small a provision is made for harmony and coherence in the conduct of state business. It is all carried on by officers and boards having frequently no relation with one another or with any common superior. No other governments except those of our counties and some cities are carried on in this way. No other human enterprise of any sort hampers itself with such an organization. It began with the democratic movement. It has gone on getting worse with the addition of the new branches of administration which the conditions of twentieth-century society have necessitated. Such an administrative organization is like an old house, originally somewhat cramped and ill arranged, which, as the family has grown, has had attached new ells, wings, and dormers, until it is an architectural nightmare.

In most states are some half-dozen elective officers. In over two thirds of the states there is a lieutenant-governor, who takes the place of the governor in the case of the

latter's incapacity or absence from the state. To relieve the tedium of waiting for these events to occur, he is given the duty of presiding over the senate. Where there is no lieutenant-governor, the president of the senate is frequently designated by the constitution as the successor of the governor.

**The elective
offices**

Then there is a secretary of state, who is only a glorified chief clerk. He keeps the records of the state and collects a variety of statistics. He issues the calls for elections and tabulates the returns for state offices. In his office the Great Seal is affixed to documents requiring such authentication. In some states he issues certain licenses and certificates of incorporation to corporations organized under the general laws of the state.

**Secretary of
state**

There is a treasurer, whose principal function is to keep safe the moneys of the state. He usually has some discretion with regard to the deposit of funds in banks, and similar matters, and where there is no comptroller or auditor he is the chief accounting officer. Otherwise his duties are of a purely routine order.

Treasurer

Most of the states have a comptroller or auditor, who is the principal disbursing officer of the state, his signature being necessary to the validity of any order on the treasury. He keeps the books of the state and checks the expenditures of each department. In some states he has certain powers with regard to the supervision of the finances of counties and municipalities. He makes up, before each session of the legislature, estimates of the probable revenue and expenditure of the state, which are made the basis of the general appropriation and tax levy bills (see Chapter XXXIII).

**Comptroller
or auditor**

The attorney-general is first of all the legal adviser of the governor and of such of the other departments as do not have attorneys of their own. His decision is usually

Attorney-general

treated as final by the officer who seeks it, and while an occasional case gets into the courts, in most instances the attorney-general settles the matter. It is difficult for a person who has never been directly connected with the state government to realize the influence which is thus exercised by the attorney-general. He is further expected to prosecute or defend all actions in which the state is a party, including the appeals which come up from the lower courts in criminal cases. In some states he may be directed by the governor to institute criminal proceedings before any of the courts of the state for the trial of such cases.

Superintendent of public instruction

The superintendent of public instruction is usually elected by the people, although in Massachusetts and New York he is appointed by the state board of education. His functions are to act as the executive officer of the state board of education, to visit the schools (an impossible task), to attend the county teachers' institutes, and to apportion the funds given by the state for the support of local schools (see Chapter XLV).

Other state officers

Among the other state officers sometimes elected by the people are a surveyor-general, who is the land agent of the state for the disposition of the lands given by the United States for the support of education; a board of equalization, whose duty it is to equalize the assessment of taxes between the several counties of the state; a state printer; a state engineer; a board of fish and game commissioners; a board of railroad commissioners; a commissioner of agriculture; an insurance commissioner; a board of regents of the university; and a board of education.

Appointive officers

The rest of the state officers are practically all appointed by the governor, generally with the advice and consent of the senate. In some instances they are appointed to serve during the governor's pleasure, in others during the pleasure of the governor and senate, but in the majority

of cases for a fixed term with no definite provision for removal at all. Some of the departments have single heads, others are in charge of boards or commissions. For purposes of clearness we may use the term "board" to describe those bodies the principal duties of which are to select an executive head and supervise his conduct, and the term "commission" to describe those bodies which themselves perform, as bodies, actual administrative duties. The former usually serve without pay, the latter almost always receive a salary. The nomenclature of our state statutes does not always follow this distinction, but you will find it useful in expressing your own ideas. The best examples of commissions are the so-called railroad or public utility commissions which are now becoming common. A good example of a board is the board of regents of a state university. The members of boards and commissions appointed by the governor usually retire in rotation, so that they are thus removed one step farther from any genuine control.

There are also, in most states, a number of ex-officio boards or commissions. These are probably the worst administrative device applied to state governments. None of the members of these ex-officio bodies have any time or inclination for service on them. Their chief thought is to escape responsibility, while picking up any crumbs of patronage which may come their way. The patronage is usually divided among the members of the body.

**Ex-officio
bodies**

Among the single-headed departments are numbered in most states the commissioner of banks, the insurance commissioner, the adjutant-general, the commissioner of agriculture or horticulture, etc. State institutions are generally under the control of boards, one board to an institution. In some states, however, there has been some progress made toward concentrating power in the

hands of boards of control or boards in charge of groups of related institutions,¹ and the like. The number of officers and boards is prodigious, and we have not the space to enumerate them even for a single state, much less for all. Some of them we shall refer to later when we come to the discussion of the functions of government. As for the rest, you must study at first hand the administrative organization of your own state.

**Boards of
control**

That there has been a great deal of waste and inefficiency in state affairs directly owing to this disorganized and chaotic arrangement goes without saying. Various efforts have been made to correct the evil. One of the most interesting is the establishment of the so-called boards of control. These boards, appointed by the governor and responsible to him, are primarily his agency for directing the administration. They have wide powers of audit, so that their approval is necessary before the comptroller may draw a warrant. They have even gone farther and established a system of pre-audit, by which supplies for the various institutions and departments are all obtained by requisition on the board of control, which determines in advance the wisdom of the expenditure. The same idea is applied to other fields of expenditure. By this means considerable efficiency is introduced into the matter of spending money, but in all other respects the various officers and boards are as independent as ever. At best, the board of control method is a very incomplete and unsatisfactory means of centralizing the administration of the state.

The only thorough remedy for the present condition would be to abolish the present elective state officers and group all the functions of the state under department heads appointed and removable by the governor. This,

¹ See Chapter XLV.

as we shall see, is the method of organization of the executive side of the government of the United States, and for that matter of every other civilized state or country. Under it, the governor would have for each main branch of the administration an officer whom he could hold responsible for that department, and that officer would in turn hold the subordinates within his department responsible for their conduct. Even if the governor to-day had complete power of appointment and removal over every officer in the state administration, he could not properly direct them, as it would be impossible for him even to begin to supervise personally the multitude of activities carried on by his appointees. There must be grouping of related departments under responsible heads to get permanently good results with a minimum of friction.

**Reorganiza-
tion of ad-
ministration**

Below those officers and boards who are elected by the people or appointed by the governor come a great number of persons who receive their positions through appointment by their immediate superiors. In most states they are appointed or removed without restriction and for any reason or none. The doctrine "to the victor belong the spoils" generally prevails in state government to this day. Massachusetts and New York have long had laws making eligibility to appointment to the bulk of state positions depend on the candidate's passing a competitive examination. An officer desiring to make an appointment asks the state civil service commission to certify candidates for the position. The commission sends the three highest names on its list, and from these the appointing officer must make his choice. The appointee then holds his position during good behavior, — that is, until removed on the basis of charges which his superior must substantiate. This restriction on the power of

**The civil
service**

removal is probably unnecessary, as the fact that he must choose the successor from a list of three eligibles removes all temptation to dismiss a good official to make room for a friend. For positions like those of baker or stone-cutter the examinations are not competitive, although examination is a prerequisite of appointment. The deputies of the heads of departments, some other higher officials, and laborers are not subject to examination. In spite of incidental defects, the system has accomplished a vast deal of good in those states where it has been tried. It is unfortunate that only Wisconsin and California have so far been added to the list of states which have enacted far-reaching civil service laws.

SUGGESTIONS FOR FURTHER STUDY

BEARD, pp. 499-515, gives an understanding and critical account of the subject. REINSCH, *Readings on American State Government*, pp. 222-239, is good. REED, pp. 179-193, criticizes the existing organization and suggests a new one. The organization of your own state should be studied in its constitution and laws. Where a state manual is published it will prove useful, as will a textbook on the government of your state if there be one.

For more advanced students, FINLEY AND SANDERSON, *American Executive and Executive Methods*, is the only comprehensive account, and it is brief and unsatisfactory. Some years ago, under the direction of Professor F. H. Goodnow, a number of doctor's dissertations were presented at Columbia on various phases of state administration. These will be found in the *Columbia University Studies in History, Economics, and Public Law*, vols. vii, ix, x, xvi, xvii. An excellent article bearing directly on the subject of this chapter is BARROWS, D. P., *Reorganization of State Administration in California*, "California Law Review," January, 1915.

Topics:

The Elective Officers in Your State Government.

The Appointive Officers (may be assigned in several groups).

The State Civil Service.

PART IV
LOCAL GOVERNMENT

CHAPTER XV

THE DEVELOPMENT OF CITY GOVERNMENT

THE progress of civilization is usually accompanied by a concentration of population in urban communities. As civilization progresses and the wealth of the community increases, the labor of all the people on the soil is no longer necessary to produce food for the community, and the well-to-do tend to drift into cities because there is more opportunity for social existence there than in the country. Furthermore, the increased demands of the people for clothing and other manufactured commodities cause industries to grow up in cities, which naturally attract a still larger portion of the people. This movement to the cities, which has become especially marked within the last century, is worldwide and is closely related to the economic movement of modern times. It has produced the phenomenon of great cities, with their attendant problems.

Growth of
cities

The large cities of ancient times were situated on rivers or had harbors adjacent to the sea. The reason for this is apparent upon a moment's thought. A city, if so situated, could market its manufactured products over a greater area than could a place in the interior. The greatest cities were located upon trade routes, and became important because they were the scene of the loading and unloading of ships and the exchange of commodities.

During the Middle Ages cities practically disappeared in Europe, and when, with the coming of better times, they began to grow again, it was only slowly. At the beginning of the nineteenth century England was the

only country in which the inhabitants of the cities formed a really large proportion of the total population. A series of economic changes, however, which began to be operative about the middle of the eighteenth century, have revolutionized this situation. The one which has received the most attention from students is the improvement in methods of manufacture. The invention of the power loom, the application of steam to machinery, and a succession of other marvelous inventions have vastly increased the productivity of those manufacturing industries which are almost altogether carried on in cities. At the same time there occurred numerous improvements in means of transportation. Neither or both of these facts in themselves, however, could have produced the marvelous growth of cities in the nineteenth century. Along with improvements in machinery and transportation came a much less noticed but even more noteworthy advance in methods of agriculture. One man can do to-day with modern farm machinery what it took forty men to do fifty years before the American Revolution.¹

¹ Growth of cities of 8000 population or more from 1790 to 1910 is indicated in the following table:

YEAR	TOTAL POPULATION	POPULATION OF PLACES OF 8000 OR MORE	NUMBER OF SUCH PLACES	PER CENT OF TOTAL POPULATION
1790	3,929,214	131,472	6	3.3
1800	5,308,483	210,873	6	4.0
1810	7,239,881	356,920	11	4.9
1820	9,638,453	475,135	13	4.9
1830	12,866,020	864,509	26	6.7
1840	17,069,453	1,453,994	44	8.5
1850	23,191,876	2,897,586	85	12.5
1860	31,443,321	5,072,256	141	16.1
1870	38,558,371	8,071,875	226	20.9
1880	50,155,783	11,450,894	291	22.8
1890	62,947,714	18,327,987	449	29.1
1900	75,994,575	25,142,978	556	33.1
1910	91,972,266	35,726,720	778	38.8

The cities of antiquity were city states. They consisted of the city itself and a limited agricultural area around it. They were governed by an assembly of the voting citizens, which passed laws, elected executive officers, and criticized and controlled these officers in the conduct of their duty. To the Greek and Roman philosophers the city was the state, and the rest of the territory existed for the city. The prosperity, adornment, and glorification of the city formed the chief end of ancient rulers. The happiness of the people was all wrapped up in the success of their city. Their social life centered around its market place.

The place of
cities in
antiquity

The Germanic tribes which overthrew the Roman Empire were, as Tacitus tells us, a simple, liberty-loving people living on separate homesteads and very suspicious of town life as a possible means of depriving them of their liberty. We have already seen that cities disappeared in the Middle Ages, and as they grew up again the old Teutonic suspicion of them continued. This has been true to a greater extent in our own country and in England than in the countries of continental Europe. There the Roman ideal of the city as the end and aim of the existence of government has had lasting effect. We have continued to regard our cities with suspicion and to hedge about their power with all sorts of restrictions. We have regarded the people of cities as inferior morally, to the people of the country and have permitted state legislatures, largely representative of the country people, to control city affairs. As a matter of fact, the city is the flower of civilization. It is in cities that culture develops. It is from cities that progressive ideals originate. The city should be looked upon with pride, and the development of its municipal life fostered. Neither its citizens nor the people of the rural districts should be

In modern
times

allowed to look on it with scorn. Many of the failures of municipal government in the United States would never have occurred had there been a proper feeling of pride in the city.

**The English
and colonial
origins of
city govern-
ment**

As cities grew up in England under the Norman kings, they demanded and received from the crown certain privileges, the most important of which were those of electing their own officers and of collecting and paying to the king, as a corporation, their share of the royal taxes. These privileges were usually embodied in a charter granted by the king.

Each borough was a corporation, or an artificial person; that is, it had the right to sue and be sued in the courts, to hold property and do many things which a real person can do. The governing body consisted of a mayor, aldermen, and councilmen. The aldermen were simply a superior sort of councilmen. They all met in one body, the mayor as the presiding officer. He had no other powers. In the course of time these charters, which originally had been rather democratic, were amended so as to put the control of borough affairs in the hands of the few. In many of the English boroughs of the seventeenth and eighteenth centuries, the mayor, aldermen, and councilmen constituted a self-perpetuating body. When one of their number died, his successor was elected by the rest. The boroughs which were chartered by the governors of certain of the colonies prior to the American Revolution were given governments organized on this same plan. In Philadelphia the council was made self-perpetuating. In New York, the aldermen and assistant aldermen were elected by the "freemen" of the city, but the mayor was appointed by the governor. Their population was small, the demands of life were simple, and there was little for the city government to do. It was considered an honor

to serve as mayor or as a member of the city council. Under these conditions it is not surprising that in the few cities of the colonial period the government was fairly satisfactory.

The formation of our national government had important effects upon the form of city government. In the charters, which under the new state constitutions were granted by the legislatures instead of by the governor, wider and wider divergences from the English type appeared. The first result of the Revolution was to do away with the self-perpetuating councils of Philadelphia and some other cities, and generally to broaden the franchise. After the adoption of the Constitution of the United States, new charters showed the influence of what Professor Munro calls the "federal analogy." An attempt was made to imitate the form of government which was proving a success for the nation. The council became a two-chamber body. The mayor was elected directly by the people and intrusted with the veto. The upper house of the city legislature, on the other hand, was given the power of confirming the mayor's appointments. The result was the establishment of a system of checks and balances very similar to that in the national government. Whatever may have been the merits of this system as applied to the government of the United States, there can be no question but what it proved highly detrimental to the welfare of our cities. City government is largely a matter of practical administration, — the actual building of streets, sewers, bridges, the maintenance of fire departments, police departments, etc. For these purposes a government capable of prompt action and in which responsibility is clearly fixed is necessary. The "federal analogy" has exercised a blighting influence on our municipal government by dividing responsibility

**The effect of
the Revolution**

and making it difficult for the people to tell on whom to place the blame for failure.

**The effect
of the
democratic
movement**

We have already noted the effect of the great democratic movement of the thirties and forties upon state government. It had a similar but more disastrous effect upon city government. In the first place, the municipal franchise was widened to include practically all white men of full age at the time when the flood of foreign immigration was beginning to pour into our country. The immigrants, to a large extent settled in cities and under lax administration of our naturalization laws, almost immediately became voting citizens. Ignorant of our institutions, unpracticed in the ways of democratic government, they fell under the control of rings and bosses, who directed their voting as they wished. At the same time the increasing population of cities made necessary additional municipal services. Police and fire departments, waterworks, sewage systems, and paved streets had to be created. For these new tasks new officers were necessary in the city government. In accordance with the same democratic theory which caused the secretary of state and state treasurer to be elected by the people, police commissioner, fire commissioner, street commissioner, and sewer commissioner were likewise made elective. This introduced a new intricacy into the already complicated machinery of city government. If it had been difficult before for the people to tell who was to blame for wrongdoing, it was doubly difficult now. The situation was made worse by the practice of the city council of delegating to committees the duty of overseeing the various executive departments. It was easy for the head of the street department to shift responsibility from his shoulders to that of the committee for anything that went wrong. The committee would pass it on to the council, and the council

would throw it back upon the mayor. The result was an endless game of battledore and shuttlecock, with the people as interested but bewildered spectators.

We have already seen that the state legislatures succeeded to the chartering power of the colonial governors. In the absence of express limits upon their authority, the courts held that the legislatures might make any provision they pleased with regard to municipal government. The general practice was for the charter to be framed by a group of citizens usually connected with the political party in power in the state. It would then be introduced into the legislature by a member from the city in question, and the legislature would adopt it without much consideration. The real evil in this system of making charters lay in the fact that the people who actually framed the charter were not responsible to any one for what they did, and that the legislature did not in any way effectively scrutinize the measure. Furthermore, good citizens, to correct an abuse, or members of the party out of power in the city, from motives of revenge, sometimes obtained from the legislature laws putting departments like the police department in the hands of men elected by the legislature or appointed by the governor. The legislature usually prescribed in its charter just what powers a city might exercise. The courts have always held that a city may exercise only such powers or those which may be fairly implied from them. It being impossible to foresee just what powers the city might need to exercise, the legislatures were called upon to pass many laws giving the city power to do particular things.¹ An act of the legislature was held to be necessary for such matters as

State interference with city government

¹ A glance at the index of the statutes of Massachusetts or any of the other states which have not changed this situation by constitutional amendment will thoroughly establish the truth of this statement.

raising the salary of a janitor from eighty-five to ninety dollars per month, or to close or open a street, or to put through a claim for a few hundred dollars. While the state legislatures were freely interfering in the naming of alleyways, it is no wonder that no sense of municipal responsibility could develop among the people of the city.

As a result of the complicated character of city government, and of legislative interference, city government became so bad that reform was inevitable. It is impossible to establish a period at which our cities began to grow better. Improvement started in some earlier than in others. In certain cases the most spectacular carnivals of corruption took place after the movement for the reform of city organization had begun. Reacting from the extreme diffusion of power which we have described, city charters, about 1870, began to concentrate authority in the hands of the mayor. In the thirty years from 1870 to 1900 the power of the mayor was vastly increased. The departments which had previously been governed by independently elected heads or by state commissions were put under his control, although his power of appointment generally continued to be subject to the confirmation of the city council. Two-chamber city councils mostly disappeared. Ward election likewise tended to give way to election at large.

The reaction against the system of special charters found its first expression in the Ohio constitution of 1851, which provided that cities henceforth might be chartered only by general law. This principle has been written into many of the later constitutions. The courts, however, have held that a law is "general" if it applies to a whole class. The result has been that in those states which have imitated the Ohio provision, the legislatures have provided different forms of government for

The begin-
ning of
reform

Charters
granted by
general law

various classes of cities. In Ohio they carried the process of classification, which was on the basis of population, to such extremes that all of the principal cities of Ohio had what in reality were special charters. In 1902 the supreme court of Ohio decided against the power of the legislature to make such classifications, and all cities of that state were governed by a uniform code until the adoption of the revised constitution in 1912.

The practice has grown in recent years of enacting two or more alternative forms of government, among which the municipality may have its choice. The famous Iowa statute establishing what is commonly known as the "Des Moines" form of commission government was simply alternative to an older general-law charter for first-class cities. The Ohio amendment of 1912 provided for the enactment by the legislature of several standard acts for city government, of which cities may have their choice. The New York legislature of 1914, however, went still farther by providing five alternative forms of government for second-class cities.

**Alternative
charters**

The Missouri constitution of 1875 gave to cities of over 100,000 population¹ the right to frame their own charters. The California constitution of 1879 copied the Missouri provision, and the right has since been extended in that state to all cities of 3500 or over. Washington followed in 1889; Minnesota in 1898; since which time Colorado, Oregon, Oklahoma, Michigan, Arizona, and Ohio have given cities that privilege. The charters are drawn up by a charter commission or board of freeholders of from thirteen to twenty-one members. They are elected by the people, except in Minnesota, where they are appointed by the district court. The election of freeholders is called by initiative petition or by the city council.

**Freeholder
charters**

¹ St. Louis was the only city affected.

When the board has completed its work, the charter is submitted to the voters of the city. In general, a simple majority of those voting at the election is sufficient to secure its adoption, but in some states a larger proportion of the vote is required. In California a charter does not become effective until it has been approved by the legislature, which, however, always happens. In Michigan the charter is submitted to the governor, and if he does not approve of it a two-thirds vote of the people of the city is necessary to put it in force. Amendments are usually proposed either by initiative petition or by the city council, but are subject to the same process of ratification as a complete charter.

**Comparison
of the three
methods of
charter-
making**

The chief objection to the freeholder system of charter-making has been that it might give the city control over affairs in which the state is primarily interested, especially in such matters as police administration, election machinery, and the administration of justice. It is obvious, of course, that such things should be regulated in a uniform way for the whole state. In consequence, either by constitutional provision or judicial decision the scope of freeholder charters has been limited to strictly municipal affairs.

The objections to the system of special charters are very serious. If the legislature really goes into them, representatives from rural districts who know little or nothing about the problems of city life will have, in most states, the last word as to the form of city government. When, as is most frequently the case, the legislature simply passes complaisantly the charter presented by a member from the city in question, it means that no proper criticism of the charter is had at all.¹

¹ A few years ago the people of Ogdensburg, N. Y., had the temerity to elect a set of Democratic city officials. The Republican member of the

The general-law charter system obviates these evils. On the other hand, unless a very minute classification of cities is permitted, it prevents variation of the form of government to meet local needs. The privilege of adopting a freeholder charter gives a city the opportunity to make its institutions fit its needs, and at the same time guarantees that the charter will be the work of responsible persons and approved by the people. On the whole, some freedom of choice as to the form of city government is much to be desired. The alternative plan of New York has great advantages if carefully worked out. It insures against local vagaries in charter-making and at the same time gives to cities a reasonable choice as to their form of government.

SUGGESTIONS FOR FURTHER STUDY

The best material for young students is BEARD, C. A., *American City Government*, pp. 3-51. GOODNOW, F. J., *City Government in the United States*, pp. 3-108, presents the subject in a fairly easy style. MUNRO, W. B., *Government of American Cities*, pp. 1-28, is more thorough, but harder. BRYCE, chs. 1-lII, gives an excellent criticism of American city government as it was prior to 1900. STEFFENS, LINCOLN, *The Shame of the Cities*, presents a series of stirring popular articles (originally published in "McClure's Magazine") on municipal corruption. For the methods of boss rule in cities see LEWIS, A. H., *The Boss*. The constitution and statutes of your own state must be frequently consulted. If the statutes are not available in the public library, they may usually be found in a lawyer's office.

For teachers: FAIRLIE, J. A., *Essays in Municipal Administration*, pp. 48-94, gives the most complete account of city government in the colonial period. WEBER, A. R., *The Growth of Cities in the Nineteenth Century*, is the only American work on that subject. On municipal home rule see GOODNOW, F. J., *Municipal Home*

legislature from that city promptly introduced a bill abolishing the existing charter and giving it a new one so as to require a new election. The legislature passed it, the chief argument with the majority being "The gentleman from St. Lawrence County wants it."

Rule, chs. iv and v, and *Municipal Problems*, ch. iv; DEMING, H. E., *Government of American Cities*; FAIRLIE, J. A., *Essays in Municipal Administration*, pp. 95-124; OBERHOLTZER, E. P., *The Progress of Home Rule in Cities*, Proceedings National Municipal League, 1904; MILLER, G. A., *The Home Rule Law for Michigan Cities*, same, 1909; REED, T. H., *Home Rule in California Cities*, "National Municipal Review," October, 1913; Wisconsin Free Library Commission, *Home Rule Charters*, Comparative Legislation, Bulletin 18.

Topics:

The Growth of Cities. (See United States Census.)

The Method of Charter-granting in Your State.

The Charter History of Your Own or a Neighboring City.

Special Legislation for Cities in Your Own State.

CHAPTER XVI

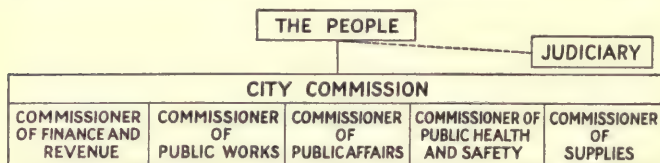
PRESENT FORMS OF MUNICIPAL GOVERNMENT

DOWN to 1900, while various attempts at municipal reform had been made, no form or type of city government that had been adopted had received conspicuous public approval. Bryce's famous statement that our city governments were our "one conspicuous failure" was still in a large measure justified by facts. Prior to
1900

It was out of a terrible disaster that there finally came a new form of municipal organization, destined greatly to influence American city government. The city of Galveston, Texas, stands at the extreme eastern end of a long, narrow island, parallel to the shore of the Gulf of Mexico. The island lies low to the water, but the slight normal rise and fall of the tide left the people in perfect apparent security until Saturday, September 8, 1900, when a West Indian hurricane, blowing at the rate of 120 miles an hour, piled the waters of the Gulf upon the unfortunate city. Nearly 7000 people lost their lives, and over 4000 homes were swept away. The desertion which always follows death and disaster brought the city's population down from 45,000 to about 20,000. The heroic remnant faced the herculean task of rebuilding their city and making it safe from a second flood. The Galves-
ton experi-
ment

The city government of Galveston at that time was of a not uncommon type in the United States. It consisted of a mayor and of twelve aldermen who were elected at large. The mayor had the veto power, and the board of aldermen had the power to confirm or reject the mayor's appointments. Under the strain of the flood crisis, the

city government failed entirely, and the actual work of rescue and restoration had to be undertaken by a voluntary committee of business men. As soon as occasion permitted, this committee set about devising a plan of government for the city. The plan drawn up was adopted by the Texas legislature at the session of 1901. It provided for a board of five commissioners, to whom



Distribution of powers under the commission plan of city government.

were intrusted as a body all the powers of the city government, whether of a legislative or executive nature. Three of the commissioners were to be appointed by the governor and two elected by the people at large every two years. The provision for the appointment of three commissioners by the governor was held unconstitutional by the court of criminal appeals, and in 1903 the charter was amended so as to provide for the election by the people of all five commissioners. One of the commissioners is called the "mayor-president." He is directly elected to that position. The other four commissioners are simply chosen to the commission. The mayor receives a salary of \$2000 a year and is expected to give six hours a day to the work of the city. The other commissioners receive a salary of \$1200 a year and give only such time as is necessary to perform their duties. The mayor-president has no particular power other than as presiding officer of the commission. The commission, as a body, is the final authority in all city business. For the purpose of supervising the administration of affairs,

the commission assigns one of its members to each of the following departments: police and fire; streets and public property; waterworks and sewerage; finance and revenue. The commissioner in charge of each of these departments directs the details of management, subject to the control of the commission as a whole. The more important appointments are made by the commission upon the recommendation of the commissioner in charge of the department in question. The less important appointments are made by the commissioner on his own authority.

The terrible situation in which the city of Galveston found itself called for the best leadership in the community. It need not surprise us, therefore, that the first body of commissioners was made up of leading business men of the city. What is more surprising is that these same men were long continued in control by the votes of the people. The commission adopted the practice of meeting in the evening, and the individual commissioners did not undertake to manage all the details of their several departments. They intrusted that work to well-trained and competent officers. They themselves acted in the same relation toward these officers as the board of directors of a corporation acts toward its employees. The results were strikingly successful. With the aid of the federal government an enormous sea wall was erected to protect the city from the Gulf. The grade of the city was raised to the level of this sea wall; a new and effective sewage system was installed; streets were paved; the moral conditions of the city were corrected; and all with a marvelously small expenditure of public money. In short, Galveston became an object lesson to the rest of the United States. More important than anything else was the encouragement which it gave to the work of all

**Success of
the Galves-
ton plan**

municipal reformers. We had long rested in the belief that the condition of our cities was desperate. All efforts toward reform were made from a sense of duty, but without much hope of success. Galveston showed that an American city could be run in an efficient manner.

The spread
of commis-
sion
government

It was some time, however, before the Galveston form of government was extensively copied. Houston, Texas, in 1905 received a charter in some respects like that of Galveston. There was, however, some apprehension on the part of the people about granting complete power over the affairs of the city to such a small body of men. The idea that checks and balances in government were necessary to avoid abuse of power was ingrained in them. The added elements which were necessary to secure a general adoption of commission government had their origin with certain citizens of Des Moines, Iowa. They secured from the legislature of that state, in 1907, an act providing that any city of 25,000 population or more might adopt a commission form of government. The city of Des Moines promptly took advantage of this privilege, and the act which went into effect in that city in April, 1908, has become famous as the Des Moines form of government. It differed from the Galveston form in several particulars. The commissioners were paid larger salaries than in Galveston, the mayor receiving \$3500 a year and the councilmen \$3000 a year. On the other hand, these officers were expected to give all their time to the work of the city and to be the actual working heads of the departments to which they were assigned. Unfortunately, the Des Moines idea in this respect has been copied by practically all other commission-governed cities. A large part of the success achieved in Galveston was undoubtedly due to the high grade of men who made up the board of commissioners. Such men could not have been

attracted away from their important private business to accept a full-time civic position. The principle that a commissioner must give all his time to the city and be the actual working executive in his department has meant that only mediocre men have been willing to become candidates.

The Des Moines plan, however, added certain provisions not in the Galveston charter which were to have an important effect upon the spread of commission government. These were the initiative, referendum, and recall, the general nature of which has been described in an earlier part of this book. With these reserve powers in the hands of the people, the fear of concentration of power in the hands of a small commission disappeared, and the commission form of government spread like wildfire over the country. There are now more than three hundred cities, ranging all the way from New Orleans with a population of 339,000 down to little cities of a few hundred inhabitants, which have adopted it.¹ The Des Moines plan also first applied to American city government the idea of non-partisan nominations and elections already referred to.

**The Des
Moines plan**

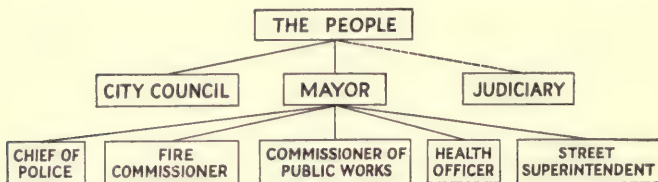
While the idea of concentrating the powers of city government in a small board was making such tremendous headway, the tendency which we have already noted toward the concentration of large powers in the hands of the mayor was brought to its highest point in the Boston charter of 1909. Under this charter there is a mayor elected by the people of the city for a four-year term.² The council consists of nine members elected for terms of

**The mayor
type of city
government**

¹The extent to which the initiative, referendum, and recall have been adopted in connection with commission government is pointed out in an article by Dr. Charles F. Taylor in the "National Municipal Review" for October, 1914. Of 279 municipalities, only eighteen were entirely without these features; 197 of these cities had all three.

²There is an unworkable recall provision.

three years, one third retiring each year. The mayor has complete control over the administrative side of the city's business. His appointments need no confirmation by the council. The only restriction upon him in this regard is the power of the state civil service commission to refuse to certify the competency of his selections for department heads. The mayor has the power of veto on



The mayor plan of city government, showing the concentration of large powers in the hands of the mayor.

all acts of the council, including items of appropriation bills. Still more important is his sole power of originating the annual budget and other appropriation bills. The council may reduce or reject but cannot increase the items which he recommends. Since the work of city government is largely concerned with the spending of money, it is clear that the mayor is by this provision made practically dictator of the city. The council has little to do except to say yes or no to the mayor's request for money. The council has the power to grant franchises and to pass police ordinances, of course subject to the veto of the mayor. There is no possible confusion as to who is responsible for what the city does. In every case it is the mayor.¹

¹ This charter also provided for a "finance commission," appointed by the governor to watch and report on the conduct of the city government. The activity of this commission and the definite fixing of responsibility have brought about considerable improvement in the conduct of the city's business.

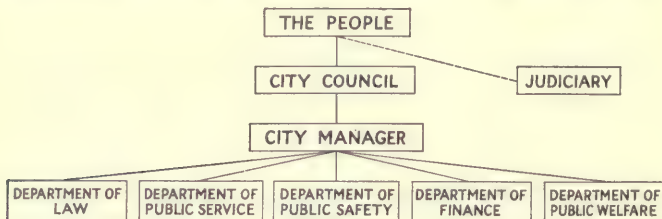
The government of New York City has characteristics of both the mayor and commission plans and furnishes the only example in America of a city divided into boroughs. These boroughs, of which there are five, represent the several units which were united to make the present Greater New York. Each borough elects its borough president, who has a large power of appointment, and considerable administrative authority within the borough, especially with regard to public works. The mayor is elected by the people at large for a four-year term and appoints the heads of most of the principal departments of the city. As a matter of convenience these departments frequently maintain offices in the several boroughs. Besides the mayor, the comptroller and the president of the board of aldermen are elected at large. The board of aldermen is elected by districts. This board, however, has even less power than the city council in Boston. The financial powers, which in Boston belong to the mayor, are vested in a board of estimate and apportionment. This board consists of the mayor, comptroller, and president of the board of aldermen, who each have three votes, and of the presidents of the five boroughs of Manhattan, Brooklyn, Bronx, Queens, and Richmond, the first two having two votes each and the three last having one vote. The annual budget originates with this body. It has jurisdiction over franchises and over practically everything which involves the expenditure of money. This system in New York does not by any means work perfectly. Many of the best students of municipal conditions in that city criticize the organization of the board of estimate and apportionment, and believe that legislative and executive functions should be more completely separated.

Government
of New York
City

The idea of intrusting the management of the city to a non-political officer, who should bear the same relation

**City
manager
plan**

to the city council that the manager of a corporation bears to its board of directors, is not entirely new. Suggestions of this sort appeared years ago. It was not, however, until the rather general adoption of commission government, with its director-like council, that the practical application of the plan was attempted. In December,



The city manager plan of government.

1910, the board of trade of Lockport, N.Y., while searching for a form of government to take the place of the city's complicated mayor and council plan, hit upon the idea of adding to the commission of five members, similar to that of Galveston and Des Moines, a manager, who was to be appointed by the council to hold office during its pleasure. The appointment of practically all other officers and the direction of their work was to be in his hands. He was to attend all meetings of the commission and to have the right to speak, but not, of course, to vote. The legislature of New York refused in 1911 to give Lockport this form of government. The proposed charter of Lockport, however, has become the model for a considerable number of other city charters actually adopted.¹

¹ Sumter, S.C., has the honor of being the first city to adopt a charter providing for a manager. This was on June 12, 1912. In the meantime the city of Staunton, Va., which was governed by a mayor and council, passed an ordinance by which the administration of the city was intrusted to a manager. The largest city which has yet adopted the plan is Dayton, Ohio, with a population of 116,000. A score of other cities scattered all over the country have at this writing taken up the idea.

The very wide adoption of commission government, especially by cities of moderate size, would seem to indicate that it has proved successful in meeting the problems of American cities. There can be no doubt that commission government has proved much better than the confusing and complicated system which preceded it. The mechanism of city government has been greatly simplified. The small size of the council and the concentration of all authority in its hands has had the effect of fixing responsibility. The result has been a great improvement in the honesty of city government. It has made it more genuinely representative of the wishes of the people.¹ On the score of efficiency, however, commission government cannot point to many conspicuous successes. Galveston's experience has remained unique. On the whole, however, the efficiency of commission-governed cities is greater than that secured in other cities of like grade.

**Has the
commission
form of
government
been a
success?**

It was inevitable that the success of commission government in producing efficiency should be only moderate, except where, as in Galveston, the commission acts simply as a board of directors. The Des Moines method, which has been the one almost universally adopted, gives the actual administration of the departments to elected commissioners. We have already seen that such men are usually of only mediocre ability. It is impossible to choose

**Limitations
of commis-
sion gov-
ernment**

¹ In this connection, we must not neglect the influence of the initiative, referendum, and recall, which have put strong barriers in the way of misbehavior of city officials. These devices have not been used very extensively, but the fact that they have existed has nipped in the bud many schemes of graft and corruption. Some authorities, on the other hand, ascribe the general merit of the commission form of government to the short ballot which it makes possible. Still others emphasize the non-partisan system of nominations and elections. Any true estimate of the cause of improvement in our city government must award a large part of the credit to other causes than the concentration of legislative and administrative authority in a small board, which is the essential idea of commission government.

expert administrators by popular election. The man who is the best vote-getter is frequently the worst possible sort of administrator, while a good administrator is only rarely gifted as a candidate. Another difficulty with commission government in the matter of efficiency is that it makes no provision for a single executive head. Five men are better than one for purposes of deliberation, but one man is superior to five in action. The fact, too, that the commissioners are individually heads of departments, and collectively a legislative body, prevents effective criticism of their administrative work. A commissioner is reluctant to criticize the conduct of any other department, because the commissioner criticized is likely to hit back. Each commissioner pursues the timeworn policy of "those who live in glass houses."

The relative merits of independent mayor and city manager plan

The independent mayor type of city government, as illustrated by Boston, gives us a single executive head, and separates executive and legislative functions so that the legislative department may act as a critic of the executive. The chief difficulty with this plan is that the mayor, when elected, is during his term of office practically irresponsible. The recall is at best but an ineffectual check upon the executive, since it cannot be used to punish ordinary mistakes of judgment. It is a weapon of too heavy a caliber for use except in extraordinary emergencies. The criticisms of the council may be ignored. This gives the people no remedy for the mistakes of the mayor during his term. The city manager plan also gives us a single executive head. At the same time it offers an added advantage in continuous responsibility on the part of the manager. He may be removed by the council at any time. He is in the position of a manager of a corporation, and the council in that of the board of directors. They act as representatives, deciding

the policy to be pursued, and the manager simply carries out that policy as an expert in administration. This is the method of organization which has been most successfully pursued in private corporations.

SUGGESTIONS FOR FURTHER STUDY

The best supplementary reading for students is to be found in BEARD, C. A., *American City Government*, pp. 52-128. WILCOX, D. F., *Great Cities in America*, gives excellent accounts of the governments of New York and other larger cities. An article by TURNER, G. K., *Galveston a Business Corporation*, in "McClure's Magazine" for October, 1906, remains the best statement of the achievements of that city. MUNRO, W. B., *Ten Years of Commission Government*, in "National Municipal Review" for October, 1913, is the sanest summary of results of that form of government. REED, T. H., *Government for the People*, pp. 194-214, may be profitably read in connection with this chapter. BEARD'S *Loose-leaf Digest of Short Ballot Charters* contains many articles of great merit, the more important of recent charters in full and the less important ones in outline. It is published by the Short Ballot Organization and is kept strictly up to date. A portion of the above digest, *City Manager Plan of Municipal Government*, can be obtained separately for twenty-five cents. JAMES, HERMAN G., *Applied City Government*, gives a model charter of the manager type. It is a brief and useful book. Among the late books RYAN, OSWALD, *Municipal Freedom*, and TOULMIN, H. A., *The City Manager*, will be found especially useful.

For teachers: On commission form of government the best books are BRADFORD, E. S., *Commission Government in American Cities*; WOODRUFF, C. R., *City Government by Commission*; MCGREGOR, F. H., *City Government by Commission*, University of Wisconsin Bulletin No. 423.

Topics:

The Charter of a Commission-governed City.

The Charter of a City Manager City.

The Charter of Your Own City.

A Study of the Organization of Your City Government (divided among several pupils), culminating in the preparation of a chart showing the relation of the various offices.

The Initiative, Referendum, and Recall in City Government
(especially as they relate to your own or near-by cities).

The Short Ballot as a Factor in Municipal Reform.

"Experts" in City Government, their selection and relation to
the political officers of the city.

Chapter XXXIX relating to Municipal Functions may perhaps
be profitably studied at this point, with special emphasis on
the functions of your own city.

CHAPTER XVII

RURAL LOCAL GOVERNMENT IN ENGLAND AND THE COLONIES

WE need look no further back for the origin of our local institutions than to seventeenth-century England. The most important unit was the county. Representing the king in military matters was an officer of great dignity, known as the "lord-lieutenant." A sheriff, appointed by the king, was the executive authority so far as any existed for matters other than military. There was also a coroner, the only officer in the county elected by the people. Power was lodged principally in the justices of the peace, twenty to sixty in number, who were appointed by the crown on the nomination of the lord-lieutenant. They were usually taken from among the landed gentry of the county, and, while not responsible to the people in any sense, were fairly representative of the locality. These justices were charged in the first place with the preservation of the peace, and in the second place with seeing to it that the laws were faithfully administered. A single justice could exercise some minor powers. Two justices together could exercise still more, and all of the justices together in "quarter sessions" (so called because they were held quarterly) constituted at the same time a court for the trial of important criminal cases and for holding to their duty the various officers of the county and other local divisions. The only other active unit of local government was the parish. The parish was originally an ecclesiastical division, being the territory served by a single church. The parish or

English
county gov-
ernment in
the seven-
teenth
century

"town" meeting, as it was frequently called, made up originally of the adult male inhabitants, voted the parish rate or tax for the support of the church and other purposes. The parish meeting also elected the church wardens, who were the principal officers of the parish. Other parish officers, notably the overseers of the poor and the constable, were appointed by the justices of the peace of the neighborhood, frequently upon the recommendation of the parish meeting.

Physical
conditions
in the col-
onies as de-
termining
the char-
acter of local
government

Our colonial ancestors brought with them their English ideas of local government, and applied them as best they might to the conditions in America. These conditions differed very much in the different sections of the country. In New England the soil required cultivation which could only be given it by small proprietors. The winters were intensely severe; the Indians were fierce and hostile. All these conditions tended to keep the early settlers of New England together in little settlements. In Virginia, on the other hand, the soil of the regions first settled was marvelously fertile and adapted to the production on a large scale of the staple crop, tobacco. Broad, navigable rivers penetrated far into the interior, so that the ship could sail directly up to the wharf of the plantation and load her cargo of tobacco for an English port. Under these circumstances it was natural that the estates should be very large and that the population should be scattered. Furthermore, the early New England towns were usually settled by already organized congregations, the members of which naturally clung closely together. The territory midway between Virginia and New England partook in varying degrees of the character of each, and, as we shall see, took on an intermediate form of local government.

The government of the New England town was vested

in a meeting originally of all adult male persons, but later of church members or taxpayers. The parish meeting in which settlers had participated in England was undoubtedly the origin of this institution. At first the town meeting settled all matters itself. It was found, however, that it had to be called so frequently as seriously to interfere with the work of the people. They therefore had recourse to the election of a committee or board of selectmen. There were from three to thirteen of them, and they exercised in the interim between meetings practically all the powers that might be exercised at the town meeting itself, except the election of the more important officers. Their service was unpaid, and it was considered a great honor to be a "selected" man. Town meetings, usually held in March or April, elected town officers, went over the accounts of the selectmen and approved or rejected them, and made appropriations for the ensuing year. The town meeting adopted also a great many by-laws very carefully regulating the lives of the people in various ways which we should to-day consider objectionably meddlesome. They elected a large number of officers, most of whom served without pay except the town clerk, who received certain fees. Among these officers were the treasurer, assessors, tax collectors, surveyors of highways, and clerks of the markets. There were besides a large number of officers who performed what were practically police duties. The most important of these was the constable, who was the only general police officer. The others simply regulated particular matters,—such as hog-reeves, who looked after the matter of the running at large of hogs; rebukers of boys in church; viewers of fish, cordwood, or any product of the community. It was the duty of these last officers to see that fair measure was given. The

**The New
England
town**

town crier was an invaluable officer in the days before newspapers.

**The county
in New
England**

In New England the colonies were also divided into counties, and in these counties there were the justices of the peace and courts of sessions, or county courts. These courts in general exercised judicial power in criminal and civil matters, but they had the right to approve or disapprove of town ordinances, and many other administrative duties. They had the power, too, like the justices in England, to fine the town for the non-performance of its legal duty. For example, the colony of Massachusetts required each town of fifty families to maintain a school. If the town failed to do so, it was indicted and tried in the county court and fined like any individual offender. It is possible to find in the records of many Massachusetts towns debates as to whether the town would hire a school-master or appoint attorneys to defend it before the court. The county, however, was a much less important unit of local government than the town. Though there were legal limits to things which the town might undertake, it knew practically no master, "except the Great Jehovah," whose notions about earthly things were variously interpreted.

**Local
government
in Virginia**

In Virginia, as one might well suppose, the county became the principal unit of local government. The principal authority in a Virginia county was the county court, composed of justices appointed by the governor for life. As a matter of practice, vacancies were filled by the governor upon the recommendation of the remaining justices of the county; and thus the county court became a close corporation of well-to-do and influential members of the aristocratic class. The court usually met monthly in the county town. It had civil and criminal jurisdiction like the justice's courts in New

England and the court of the quarter sessions in old England. It had, besides, administrative powers, which included the construction of highways and bridges, their maintenance and repair, and many other matters. The chief executive officer of the county was a sheriff, who was appointed by the governor from a list of three of their own number submitted by the justices of the county. There was also a lieutenant, who had charge of military affairs and was appointed directly by the governor, a coroner, and a land surveyor.

The parish existed in Virginia as a minor unit of local government. The chief authority in the parish was the vestry, a body composed usually of "twelve of the most sufficient and selected men within its limits." At first these vestrymen were elected by the people, but they later came to fill vacancies in their own number and thus became a close corporation like the county court. They had some functions with regard to taxation, the selection of the minister, and the relief of the poor, and to seeing to the care and education of poor children. They appointed two church wardens, who had peculiar charge over the morals of the people. It was their duty to present to the county court persons guilty of drunkenness and swearing and other moral offenses.

The Dutch occupation of New Amsterdam left no trace in the local institutions of the colony. After the English conquest New York was divided into counties, in which the chief authority was the county court, made up of justices appointed by the governor. The powers of this court differed somewhat from county to county, but included a good many of a strictly administrative kind, such as determining the number of constables and overseers of highways for each precinct, granting liquor licenses, appointing inspectors of flour, etc. The powers of the

**Local
government
in New York**

town and of the town meeting were gradually enlarged with the influx of settlers from New England, until they possessed a very substantial authority. In 1703 the town meeting was given the power to elect among other officers a supervisor. The supervisors of all the towns in the county were required to hold at least one meeting a year to "compute, ascertain, examine, oversee, and allow the contingent publick the necessary charges" of the county. As time went on, this board of supervisors came to exercise more and more power and ultimately took over the administrative duties of the county court and a multitude of new duties which the advance of civilization created. The supervisor also became the most important officer in his own town. We may sum up the New York system of local government by saying that both town and county were important units of local government, and that the affairs of the county were regulated by a board made up of town officers.

Local gov-
ernment in
Pennsyl-
vania

At the outset in Pennsylvania governmental authority was vested in the county court, and after 1722 in the general quarter sessions of the peace, made up of justices appointed by the governor. The justices of the peace were assisted in financial matters by assessors, who, after 1696, were elected by the people in open county meeting. After 1724 the functions of assessing and levying taxes were taken from the justices altogether and given to a board of three commissioners elected by the people of the county. A township division was organized for certain purposes, as, for example, for the relief of the poor and for highway purposes. The township did not, however, develop great vitality.

SUGGESTIONS FOR FURTHER STUDY

None of the general works on American government give as full an account of this subject as appears in the text.

The best condensed account is to be found in FAIRLIE, J. A., *Local Government in Counties, Towns, and Villages*, pp. 3-32. FISKE, JOHN, *American Political Ideas*, pp. 1-57, will be found very suggestive, and because of Fiske's inimitably clear style high school students will readily understand it. HOSMER, J. K., *Anglo-Saxon Freedom*, pp. 110-129, will prove useful. HART, A. B., *American History Told by Contemporaries*, vol. ii, pp. 205-223, gives samples of the records of a county court, a parish meeting, and a town meeting, with other interesting material. Many of the old New England towns have published records. Where available, they may be used with profit.

For teachers, the best single authority is HOWARD, G. E., *Local Constitutional History of the United States*, published as a separate volume in the Johns Hopkins University Studies. CHANNING, EDWARD, *Town and County Government in the English Colonies of North America*, in Johns Hopkins University Studies, vol. ii, No. 10, is a very brilliant essay. ADAMS, HERBERT B., *The Germanic Origin of New England Towns*, in the same, vol. i, No. 2, is very interesting and stimulating, although his theory is combated by the principal English authorities, such as Maitland, Vinogradoff, Seebohm, etc. See also INGLE, EDWARD, *Local Institutions of Virginia*, in same, vol. iii, Nos. 2 and 3; WILHELM, LEWIS, *Local Institutions of Maryland*, in same, vol. iii, Nos. 5, 6, and 7; and BRUCE, P. A., *Institutional History of Virginia in the Seventeenth Century*. ODGERS, W. B., *Local Government of England*, gives an excellent brief account of the historical development of local government in that country.

Topics:

The County in Colonial New England.

The Officers of a New England Town (see HOWARD, *Local Constitutional History*, pp. 96-99).

The Virginia County Court.

The New England Town Meeting (using the records of a town where available).

CHAPTER XVIII

COUNTY, TOWN, AND TOWNSHIP GOVERNMENT

A. THE COUNTY

**The sources
of county
government**

EVERY state in the United States is divided into counties.¹ For many years the organization of counties and the powers which they might exercise were made the subjects of special acts for each county. This resulted in great abuses. Legislatures almost always passed such local acts on the recommendation of a member or members from the locality, and without any sufficient criticism of their merits. The more recent state constitutions have forbidden special acts relating to county government, and the affairs of the county are regulated by what are known as "general" laws. The courts, however, have been so liberal in permitting the classification of counties that a good deal of legislation, particularly special in its character, is still passed. The people of the state of California adopted in 1911 a constitutional amendment permitting the people of counties to elect boards of freeholders, for the purpose of framing county charters by which the number and functions of county officers, together with their salaries and the method of their selection, might be regulated.

**The county
board**

The principal governmental authority in the county, which makes the appropriations and lays the taxes for the support of the county government, and to which all powers conferred upon the county belong, except those which by law are vested in particular offices, is the county

¹ In Louisiana the division corresponding to the county is known as the "parish."

board. There are two great types of county boards. The first consists of three to five (occasionally more) members, elected either at large or by districts especially created for this purpose. This county board is variously known as the board of commissioners, board of supervisors, county board, and, in Louisiana, the police jury. It is easy to see the colonial ancestor of this type of government in the institutions of Pennsylvania as we have described them. The other great type is that of a large board, made up of supervisors elected one from each town or ward of a city within a county. This system has developed from the local government system of colonial New York. It prevails in New York, New Jersey, Illinois, Michigan, and Wisconsin.¹

It is very difficult to determine which of the two types has produced the worse results. In both of them corruption and jobbery have played a very considerable part. This, however, is not so much due to the type of board used as to the utter indifference of most of the people to the character of their county officers. In this respect county misgovernment is chargeable to the long ballot, to which we have previously referred. As a matter of theory the small county board elected at large appears to afford a better prospect of holding the members responsible for their official conduct than does the large board elected by towns.

Misgovernment by county boards

¹ Some of the Southern states employ for their county institutions names which seem to exclude them from both of the classes described above. In Kentucky, Tennessee, and Arkansas, a quarterly court, made up of magistrates and justices of the peace, is still the financial and administrative authority in the county. In the two last, the districts from which the justices are elected are so numerous as to cause the court to resemble the boards of supervisors of New York or Wisconsin. In Kentucky the number of magisterial districts is only eight. In Georgia most of the county administration is conducted by the judge of probate, to whom has been given the old English term of "Ordinary," limited in certain respects by the grand jury.

**The powers
of the
county
board**

The first and most important power of the county board is its power to make appropriations for the support of county government and to levy taxes necessary to meet them. The board also acts as a board of equalization in hearing the appeals of those who are aggrieved by the assessment of their property by county and township assessors. Another important function is the building and maintenance of roads and bridges. For this purpose a considerable portion of the county revenue is expended, and until a few years ago almost all road building was done under their authority. The county board is also intrusted, outside of New England, with the care of the poor, and in some states with the care of the insane. It also constructs and cares for the county buildings, which include the courthouse, the jail, the county hospital or almshouse, and other buildings which the county business may necessitate. It has also some authority in the matter of passing health, police, and other local ordinances.¹ Wherever the county board possesses a function which involves the necessity of employing persons to carry it out, they usually fix the number and compensation of such persons. Everywhere, except in New England, the board is the canvassing authority in elections; that is, the returns from various precincts are reported to them and they make up the official count for the county.

**County
officers**

Besides the county board there are in every state of the Union officers more or less numerous who are ordinarily

¹ From this general statement of the powers of county boards, certain important exceptions must be made. In New England the county is practically nothing more than a judicial district, the principal powers exercised by counties elsewhere being vested in the towns. The county boards have very little to do except erect and maintain the county buildings, and in Massachusetts and New Hampshire they do not have the power of appropriating money, this being done in the former by the legislature and in the latter by a convention composed of the members of the legislature from the county.

elected by the people. First among these are the judicial officers, to whose functions we have already referred (see Chapter XIII). There then follows a list of officers whose names or functions are practically the same throughout the country. The smaller counties frequently combine the duties of two or more of them in one. The list includes the sheriff, coroner, county clerk, register of deeds or recorder, auditor, assessor, tax collector, surveyor, and superintendent of schools. The people of a great majority of the counties, outside of New England, elect practically all of these officers. Here again we meet the problem of the long ballot and its consequences. The general character of county officers has not been very high. The people are apt to take more interest in the election of the prosecuting attorney and superintendent of schools than in any of the others, and these are usually the best filled of the offices. As distinguished from the county board, the elected county officers are usually fairly well paid, sometimes by salary, sometimes by fees. The sheriff in the more populous counties used to make a small fortune in fees. The fee system has now fallen into disfavor and is rapidly being abolished. The salaries or fees of these officers are usually fixed by state law, and if they are paid by salary the county board must include that salary in its annual appropriations. These officers are practically independent of the county board and of one another. There is no provision for securing coöperation among them, and they not infrequently fall out with one another, to the great detriment of the county service.

It is one of the marvels of American politics that a county system such as ours should run with even a fair degree of smoothness. It is made possible only by the complacency and good nature which characterize the American people. No private business could be conducted

**Reform of
county
government**

on such a basis. The stockholders of a corporation which decided to carry on its business by choosing a board of directors and six or eight managers, each independent in his particular field, and with no provision for securing harmony among them, would be considered mad. The movement has already begun for a reform of county government. The new county charters of Los Angeles and San Bernardino, California, provide for the appointment of practically all non-judicial county officers by the board of supervisors. This means a shorter ballot and a simpler and better coördinated administration. Some such common-sense arrangement is bound to be adopted in time throughout the whole country. It is significant that they were made in the counties mentioned as soon as the power of deciding such matters was taken away from the politicians and given directly to the people.

The sheriff

We have already seen something of the duties of the sheriff as the executive officer of the courts in carrying out its orders and processes. He is also the custodian of the county jail, and is sometimes the county executioner. He is the general conservator of peace in the county, performing for the county, outside of incorporated cities, the duties which within those cities are performed by the police. The sheriff has the power of calling upon the citizens of the county to aid him in the pursuit of criminals or in the suppression of disorder, and all adult male persons are bound to obey when called upon. This mustering of any portion of the people of the county is called "posse comitatus." This power becomes of peculiar importance in case of strikes and riots.

The coroner

The coroner is a curious survival of an ancient English institution. His sole function has long been to investigate the cause of death of persons who die by violence or in a suspicious manner. The inquest, as it is called, is

made by the coroner in the presence of a jury of six persons whom he calls together. Witnesses are examined, the scene of the death and the body are viewed, and the jury then returns a verdict as to the manner in which the deceased met his death. Some sort of prompt investigation into such matters is of course highly desirable, but it could be better conducted — as has been proved in Massachusetts — by skilled medical examiners, under the direction of the prosecuting attorney. The spectacle of a rather less ignorant coroner and a rather more ignorant jury, solemnly deliberating over the cause of death of some unfortunate fellow-being, would be humorous if their work could be a subject for mirth.

Except in those states where the assessment of property for taxation is a town function, there is a county assessor who puts a value upon every piece of property in the county. The county board, having determined the amount of money it must spend, determines the rate of taxation. The tax bills are then made out, including state taxes, by the tax collector or other officer who may be charged with this duty, and are paid to him or to the county treasurer. In any event the money is ultimately deposited with the treasurer, who turns the state's share over to the state treasurer and deposits the balance in a bank or banks in accordance with law. It is usual to have also a county auditor, who is really the county bookkeeper. He is the chief disbursing agent of the county, and his signature is necessary on every warrant or order for the payment of money before the county treasurer can honor it.

**Financial
officers**

Education is still a matter of direct county management in many of the Southern and a few of the more thinly settled Western states. In these states there is always a county board of education, sometimes appointed

**School
officers**

by some central authority, sometimes by the county board, and sometimes elected by the people. This board makes appropriations for the support of education, handles the school property, and usually appoints the district trustees and sometimes the teachers. Its executive officer is the county superintendent, appointed by itself or elected by the people. He or she is generally a person of teaching experience, who handles the detailed and professional matters connected with school administration. Elsewhere in the country the immediate control of rural education is in the hands of school district trustees. In these latter states the county superintendent, usually elected by the people, exercises supervisory powers over the local authorities (see Chapter XXXI).

**Other
officers**

The county in many states is the unit of health administration. For this purpose the county board is constituted the board of health, or a separate board of health is created. The health officer is then appointed by the board (see Chapter XXXII). In many states there is a county register of deeds or recorder, with whom all transfers of land are recorded. In some states, where there is no judge of probate, there is a public administrator to attend to matters connected with the estates of persons dying intestate. It is common also to have a county surveyor, usually paid by fees, who, on the application of private persons, makes surveys, and in whose offices the surveys of various plats and tracts are filed. There are several other officers of some importance in every county, such as the superintendent of the county hospital or county poor farm, the engineer, under whose direction roads, bridges, and buildings are constructed, etc.

The county exists largely as a unit for the execution of state business. Its judicial officers, sheriff, clerk, assessor, tax collector, etc., are largely engaged in the

service of the state. Over their conduct the state has very slight control. Their first and most effective responsibility is to their local constituents. This makes the enforcement of state laws largely a matter of local public opinion. A district attorney, for example, prosecutes or does not prosecute gamblers according as his political supporters are for or against gambling. In a few states the governor can remove sheriffs and district attorneys who neglect their duty. In most states, however, he is practically powerless until circumstances justify the use of the militia. No other country in the world leaves such latitude to local officers. We are gradually moving toward more central control of county administration. Some phases of this movement will be discussed when we come to deal with the functions of government.

**The county
and the
state**

B. THE TOWN AND TOWNSHIP

We have seen how the town became the important unit of local government in New England. The town is usually of from twenty to forty square miles in extent and of irregular outline, except in northern Maine, where the Congressional townships six miles square have been utilized. The towns vary very much in population — all the way from Brookline, Mass., with 27,792, to places of only a few hundred inhabitants. Most of these towns contain but a single center of population and are geographic and social units. With few exceptions there is no separate government for the village or "center," and as the powers of the county are very slight, the town government is practically the only local authority. The objects for which its powers may be employed include roads (paving, repaving, lighting, cleaning, and watering of streets), sewers, relief of the poor, education, water supply, parks,

**The New
England
town**

libraries, electric light and power, hospitals, etc. For these purposes it has the power of taxation. It is the unit for the assessment of property and for the collection of state and county as well as town taxes.

**The town
meeting**

All the above powers and many others which lack of space forbids us to enumerate are vested in the assembly of all the voters of the town, or the town meeting. At least one meeting must be held each year. This annual meeting occurs in Connecticut in October and in the other states in the spring. It hears the reports of the various officers for the year preceding, allows their accounts, elects their successors, adopts such by-laws as seem necessary, and makes the appropriations and levies the taxes for the ensuing year. Special town meetings may be held at any time on the call of the selectmen. It is the duty of these officers to give notice of all town meetings and to include on the "warrant" (the notice of the call) a statement of the business to be taken up. The meeting is held in the town hall and usually lasts all day. It is called to order by the town clerk, and its first duty is the election of a moderator, as the chairman is called. The morning is spent in voting by ballot for the principal town officers, town elections being conducted substantially as are all other elections. Early in the afternoon the business session begins. It is usually well attended. The retiring officers present their reports, which in the larger towns have been previously printed and distributed. Any citizen present is free to express any criticism or ask any question. No better method of checking the conduct of public officers has ever been discovered than this system of report in open meeting. Keen questions and sharp comment rip open and expose to view the true inwardness of the officers' behavior. Then comes the dispatch of various matters of business set forth in the

warrant. Over them there is likely to be sharp debate. One man is as good as another in town meeting, and while, as in all assemblies, a few men do most of the talking, any man may say his say or propose an amendment.

At the head of the administration of the town stand the board of selectmen.¹ Their number is usually three, but occasionally is as high as nine. The term is usually one year, but in a few towns it is three years, — the selectmen retiring in rotation. Reëlection is rather more frequent than in any other phase of our political life. Practically speaking, they are the deputies of the town meeting to carry on its work in the interim between its meetings. While their powers vary a bit from town to town, a safe general statement may be made, that they can do anything the town meeting can do, except levy taxes, even to filling vacancies in the elective offices. All they do, however, must be by warrant of law or order of the town meeting. Their responsibility is made very effective, as we have seen.

**The board
of selectmen**

Of the other town officers the town clerk is the most important. He keeps the minutes of the town meeting and all the other town records. Marriage licenses are issued by him, and he registers births, deaths, and marriages. In Connecticut and Rhode Island he records deeds, mortgages, etc. This office is apt to be treated as non-political, and a good town clerk will be reëlected year after year. Town treasurers, constables, highway officers of various designation, and school boards are also usually elected by each town.² There are a great many town

**Other town
officers**

¹ Town council in Rhode Island.

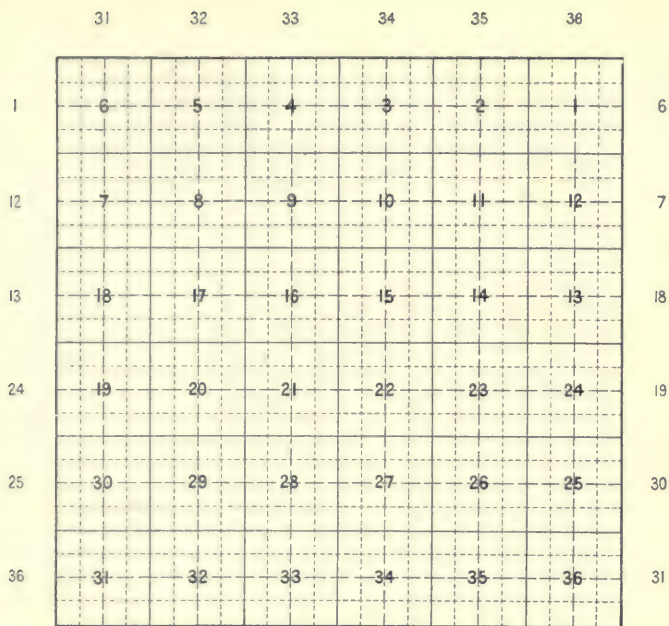
² Justices of the peace, who are not, strictly speaking, town officers, are elected by the towns, except in Massachusetts and Maine, where they are appointed by the governor. Sometimes the selectmen and sometimes elected assessors assess property for taxation. Similarly the selectmen or overseers of the poor handle the problem of poor relief for the town.

offices of ancient origin now ordinarily filled by the appointment of the selectmen. Some of these offices are obsolete, but no salary is attached, and as an "office," however insignificant, tickles the vanity of many people, they remain. The more modern functions of the government are usually administered by boards elected for overlapping terms, *e.g.* park board, library trustees, water commissioners.

**Comments
on the New
England
town**

At its best, the New England town meeting has never been equaled as a mechanism for local government. No mere representative system can give the opportunity for real participation in government which a town meeting affords. Even the small boys who come to enjoy the fun from the gallery are taught that government is a living reality. By grappling first-hand with their own small local problems, men are trained to take part wisely in the bigger affairs of state and nation. Town-meeting government is practically graftless government. The worst that can happen to it is to fall under the spell of some demagogue, which is not likely if the average intelligence of the community is high. The most favorable circumstances for the town meeting are a town of moderate size, high average intelligence, and common interests.¹ The presence of a large ignorant population makes any good government difficult, but it is a particular obstacle to the success of the town meeting. Other evils spring up when the village and the rural districts are at loggerheads or when a large and cohesive foreign element is present. On the whole, New England town government has in its nearly three centuries of history proved a great success.

¹ While there is a limit to the population which can make its local laws by town meeting, we do not think the numbers of a town need be as small as we once did. For example, in Massachusetts, where a town may become a city when it passes twelve thousand in population, there are sixteen towns above that level.

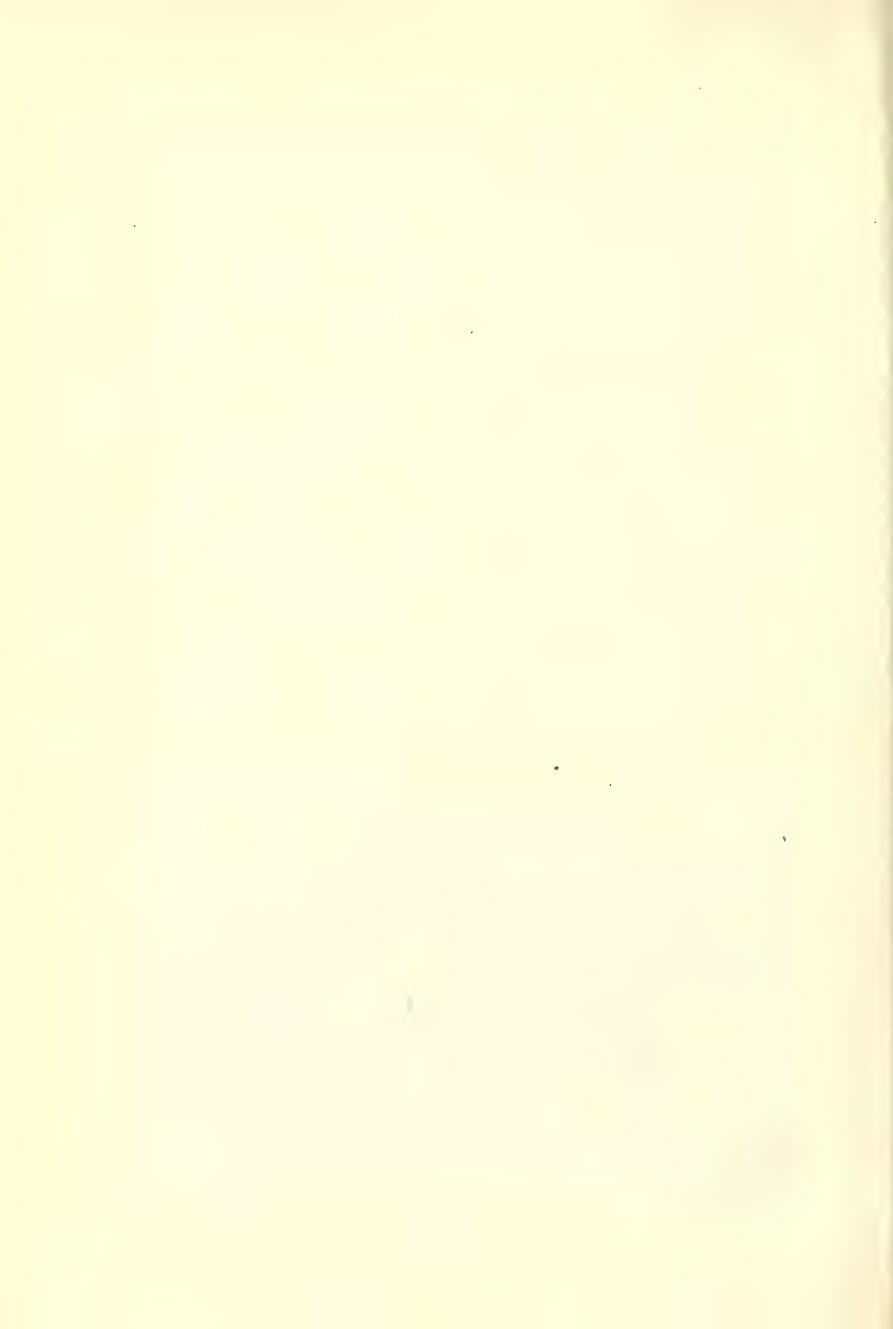


6 5 4 3 2 1

The sections of a congressional township. Each township is subdivided into thirty-six sections, each one mile square and numbered as here shown.



Map showing the intersection of a base line with a principal meridian. The point where the lines intersect is the starting point for surveying all the land in that region.



The fact that Congress for the purpose of disposing of the public lands divided the territory west of the Alleghanies into uniform districts six miles square and called them townships might have been expected to encourage the development of township government. As a matter of fact, however, these arbitrarily bounded areas were unfit for governmental purposes. The New England towns had been created one after another to give local self-government to communities as they sprang up. The lines of the Congressional township of the West as often as not failed to coincide with the actual settlements. A village partly in one township and partly in another could be satisfactorily governed only by the creation of a village government. Thus, throughout the West, we find every little center of population is a village or city removed for most purposes from the authority of the township. This removal of the village from the township greatly weakened the latter. It was left to be simply an aggregate of scattered farms which might just as well have gone with the township east, west, north, or south of it.

We have already seen that the town developed rather rapidly in New York and slowly in Pennsylvania. Another point of distinction was that in New York counties were governed by boards of town officials called "super-visors," while in Pennsylvania the county was administered by three commissioners elected by the people of the county. Each of these states has been imitated by its neighbors to the west. In fifteen states the townships are organized for general purposes of local self-government.¹ Township meetings similar to the New England town meeting, but not so well attended or powerful, are

Weakness of the township unit outside of New England

Organized townships in Middle Atlantic and Central states

¹ New York, New Jersey, Pennsylvania, Ohio, Indiana, Illinois, except in a few southern counties, Michigan, Wisconsin, Minnesota, North Dakota, South Dakota, Iowa, Kansas, Nebraska, and Missouri.

held in New York, New Jersey, Michigan, Illinois,¹ Wisconsin, Nebraska, Minnesota, and the Dakotas.² These states all lie directly west of New England, and the New England element in their population is very strong. Among the states having organized township government, there are considerable differences as to the relative weight of the county and township. In New York the township is perhaps weakest, since it cannot levy taxes, this being done by the county board of supervisors. In nine of the fifteen states the executive business is in the hands of a single officer, called most commonly a "supervisor" or "trustee" (in Wisconsin, "town chairman").³ In addition, there is usually an elective township board of three freeholders, which has charge of the township finances. In the remaining six states⁴ the principal township authority is a board of three members elected by the people of the county. The other elective township officers are clerks, assessors, treasurers, justices of the peace, and constables.

**Divisions of
the county
in the West
and South**

Even in the states which are so sparsely populated as to make it impossible or undesirable to have the township organized as a unit of self-government, it is necessary for convenience in administration to divide the county into one or more sets of districts. These districts have a wide variety of names and functions. Where the Congressional township is not made the district, it is usually larger, both in area and population, than the townships of the Central states. They deal with schools, roads,

¹ In a few counties.

² The first five in this list constitute their county board on the New York pattern.

³ Their functions are various. In New York and Missouri they act as town treasurers. In Michigan and Kansas they are the town assessors. In Indiana they until recently managed all the town business.

⁴ Pennsylvania, Ohio, Iowa, Minnesota, North Dakota, and South Dakota.

elections, justice, etc. Their officers are generally elected, but in some instances are appointed. The "magisterial district" in Virginia chooses a supervisor (member of the county board), three justices of the peace, constable, and an overseer of the poor. In California, as in most of the other far Western states, the township elects only justices of the peace and constables.

SUGGESTIONS FOR FURTHER STUDY

There is comparatively little literature on the subject of rural local government. The only treatment of the subject which will add very much to that in the text available for young students is FAIRLIE, J. A., *Local Government in Counties, Towns, and Villages*. See BEARD, pp. 638-655, and *Readings*, pp. 556-566; BRYCE, ch. xliii. Some good pamphlet literature may be obtained from the New York Short Ballot Organization, 381 Fourth Avenue, New York City, and the Alameda County Tax Association, Oakland, California. Material may also be found in the textbooks on the government of individual states.

For teachers: The Annals of the American Academy of Political and Social Science for May, 1913, is devoted to county government. It contains the latest and best body of information on the subject. ASHLEY, P. V., *Local and Central Government*, and GOODNOW, F. J., *Comparative Administrative Law*, deal in a comparative way with the organization of local administration in the United States and other countries. The latter especially is a work of great value and authority.

Topics:

County, town, and township officers and their duties will supply sufficient topics. A study of the duplication of work by county and city officers may, when such duplication exists, be assigned to several students.

PART V

GOVERNMENT OF THE UNITED STATES

CHAPTER XIX

THE CHOICE OF A PRESIDENT

THE President is chosen for a four-year term beginning on the 4th of March following his election. On the first Tuesday after the first Monday in November in each "leap year" (1908, 1912, 1916, etc.) the voters in the respective states cast their ballots for presidential electors equal in number to the senators and representatives from that state. Our forefathers intended that these electors should be the best citizens of the state,¹ and that they should independently and wisely cast their ballots for the man in their opinion best fitted for the presidency. As a matter of fact, they have never exercised discretion of any sort, always voting in accordance with the declared wishes of the party nominating them. They are a mere tabulating device for recording the vote of the state.

The electoral system

One result of the system is to make the election one by states instead of by popular majority. Twice a President has been chosen by a majority of the electoral votes, while his opponent had a majority of the popular vote. Hayes was thus elected over Tilden in 1876 and Harrison over Cleveland in 1888. Another result has been to induce the parties to nominate their candidates almost exclusively from a small group of Northeastern states. We have never had a President from west of Illinois. We have not had a President from south of Mason and Dixon's Line since Zachary Taylor, nor one from New England since John Quincy Adams. It is of course three times more important to secure the thirty-nine electoral votes

Results of the system

¹ Except federal office holders, who were excluded by the Constitution.

of New York by a majority of one thousand than the thirteen of California by one hundred thousand. A candidate from a large state is to be favored over one from a small state if the parties are evenly matched in the former. Pennsylvania — which because of its interest in protection was counted until 1912 as safely Republican — has had but one candidate for the presidency since 1856, and he was unsuccessful. It is not to be supposed that all the best material for Presidents is to be found in New York and Ohio.¹ Even if voting by states is to be continued, it would greatly simplify the ballot and the problem of counting the vote if the electors were abolished. Many people believe it would be still better to elect the President by direct popular vote.

Composition
of national
conventions.
Call and
choice of
delegates

Candidates for the presidency are nominated by national conventions of the several parties. We have already seen in a previous chapter the origin of the national conventions. They are called, in the case of established parties, by their national committees. These "calls" are issued ten or eleven months before each presidential election, and are directed to the state committees. The Democratic call simply names the time and place of the convention meeting, and states the number of delegates to which each state is entitled; the Republican call specifies also the method by which delegates shall be chosen. At one time there was considerable variety in the method of selecting delegates and in the number ap-

¹ The following list of elected and defeated candidates for the presidency enforces the principles laid down in the text :

<i>Year</i>	<i>Elected</i>	<i>Defeated</i>
1892	Cleveland, N. Y.	Harrison, Ind.
1896	McKinley, Ohio	Bryan, Neb.
1900	McKinley, Ohio	Bryan, Neb.
1904	Roosevelt, N. Y.	Parker, N. Y.
1908	Taft, Ohio	Bryan, Neb.
1912	Wilson, N. J.	Roosevelt, N. Y. ; Taft, Ohio

portioned to each state. From 1872 until 1916 both Republican and Democratic parties allowed each state twice as many delegates in the national convention as it had senators and representatives in Congress.¹

Serious evils have arisen in the Republican convention from the fact that the Southern states, in which the Republican party has practically no membership, have had as large a proportion of delegates as states in which the Republican party was a real factor in politics. In 1916 the representation of these states was for the first time reduced. Both parties provide also for the election of a number of alternates equal to the number of delegates, who have the right to sit in the convention, but not to vote except in the absence of delegates. The Republican party in all states, and the Democratic party in some states, elects two delegates from each congressional district, and four from the state at large. Until the introduction of the direct primary, these delegates were selected by congressional district and state conventions. In New York and a few other states the state convention of the Democratic party selected the whole body of delegates to the national convention. By the direct primary, or the still more radical presidential preference primary, this old method of selecting delegates has been greatly changed (see Chapter VII).

The national convention always meets in some great hall, of which the main floor is reserved for the delegates and alternates. The location of each state delegation is marked by a standard bearing the name of the state. Hosts of newspapermen, messengers, clerks, and other assistants are provided for. The galleries, which are usu-

**Meeting of
the conven-
tion**

¹ Each of these parties also allows the territory of Hawaii six delegates. The Republican party apportions two each to the District of Columbia, Alaska, Porto Rico, and the Philippines, while the Democratic party awards them six each. The total number of delegates in the Republican national convention of 1912 was 1078, and in the Democratic convention of the same year 1094.

ally spacious, are open to those of the public who have been fortunate enough to obtain tickets. Frequently the galleries vociferously express their enthusiasm for a particular candidate. There is very little chance in such a gathering for calm deliberation, and more than one national convention has been stampeded by the noisy and contagious enthusiasm of the delegates and spectators. If there are any disputes as to who has been rightfully chosen delegate, this matter is settled provisionally by the national committee, which makes up what is known as the "temporary roll" of the convention.

The opening session is called to order by the chairman of the national committee. After the reading of the call of the convention and a prayer by some clergyman, the national chairman announces the choice of the national committee for temporary chairman and other temporary officers. Sometimes, although not usually, an opposing candidate for temporary chairman may be nominated from the floor. In the Republican national convention of 1912, for example, this was made a test of strength between Taft and Roosevelt. The temporary chairman is escorted to the platform and delivers a political harangue, calculated to stir the enthusiasm of the delegates. The remainder of this first session is occupied in naming the members of four committees, those on credentials, permanent organization, rules and order of business, and platform and resolutions. Each state is entitled to one member on each of these committees. The roll of states is called and the chairman of each delegation announces its choice of a member for each of these committees.

The next session of the convention is devoted to the reports of the committees. The first committee to report is that on rules and order of business. It recommends the adoption of the rules of the previous convention, and of the

national House of Representatives where applicable. The next report is that of the committee on credentials. To this committee have been turned over the findings of the national committee on all contests. In its report it recommends the disposition to be made of these contests by the convention. It usually recommends the seating of one or the other of the contestants, but sometimes recommends that both contestants be seated and the vote divided between them. Occasionally, as in the Republican convention of 1912, a bitter fight may be made upon adopting the report of the credentials committee.

When the permanent make-up of the convention has been determined, the committee on permanent organization presents a list of nominations for permanent chairman and other officers. The permanent chairman, on being escorted to the chair, delivers another political harangue, sometimes known as the "keynote" speech, because it is supposed to outline the issues of the campaign that is to come. Next comes the report of the committee on platform and resolutions. The task of this committee is to put forth a set of party principles which will be as attractive as possible to the ordinary voter. Sometimes when issues of great importance are to be before the country, debates take place in the convention upon amendments proposed to the platform recommended by the committee. Ordinarily, however, the platform is recognized as merely "honey to catch flies," and no great weight is attached to it, either in convention or out of it.

The nomination of the President is the last task of the national convention. In these days practically all of the delegates have been pledged in advance for one candidate or another. After the first two or three ballots have been taken, however, if it is apparent that the candidate to

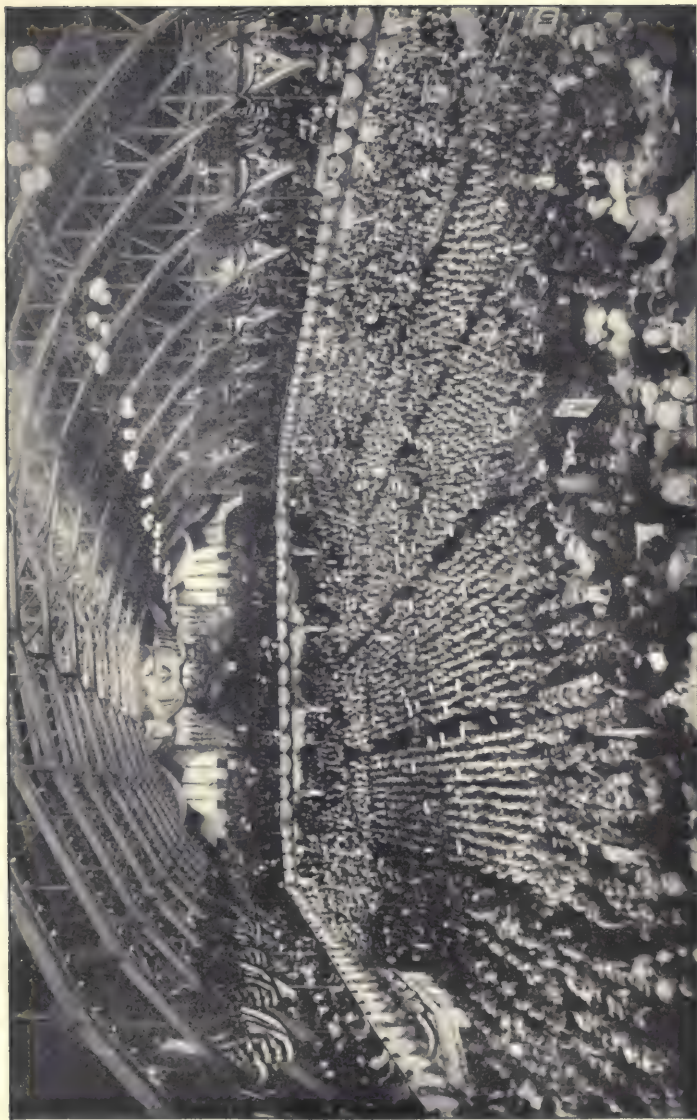
**Delegates'
pledges**

whom they have been pledged stands no chance of nomination, the delegates feel free to vote for other candidates. If the direct election of delegates by the people comes to be a general rule, it will bring with it this serious question: Must a delegate, elected because pledged to a particular candidate, continue to vote for that candidate at all stages of the convention? If this question is answered in the affirmative, it will mean that the convention will cease to be a deliberative body and that there will be no opportunity for compromise and adjustment in the selection of candidates. In this way the very purpose of the convention will be defeated.

**Nomination
of the
President**

In the Republican national convention a simple majority of the delegates is sufficient to secure the nomination. In the Democratic convention the successful candidate must have received the votes of two thirds of the delegates. Each delegate to the Republican national convention votes as an individual. The delegates to the Democratic national convention vote by states, the majority of each delegation determining how the vote of that delegation shall be cast. It not infrequently happens in the Republican convention that the nomination is made on the first ballot, but this is much more rare in Democratic conventions. In both bodies balloting is frequently necessary. It took thirty-six ballots to nominate Garfield in 1880, and forty-six to nominate Woodrow Wilson in 1912. There is seldom any contest over the nomination for Vice-President. The nomination usually goes to some member of the faction which has been defeated in the contest for the presidential nomination. Sometimes, however, the choice is made in the hope of carrying a doubtful state.

We have already seen something of the method of conducting national and state political campaigns (see Chap-



The Republican national convention of 1908, which nominated William Howard Taft for President.



ter VIII). We only need to say here that the election of the President occasions incomparably more excitement than any other election. During the period of the campaign, which extends from the time that the conventions make their selection in June or July until the first Tuesday after the first Monday in November, the country is agitated to fever heat. The position is by far the greatest one filled by popular election anywhere in the world, and the consequences depending upon it are of tremendous importance. The candidate for the presidency is formally notified of his nomination by a committee appointed by the national convention. In reply to the notification the candidate delivers a speech of acceptance. In it he lays down the principles upon which his administration will be conducted if he is elected, and this personal pledge is regarded as much more important than the party platform. Until recent years candidates for the presidency have not usually taken a very active part in the campaign. President McKinley, for example, in the campaign which preceded his first election remained quietly at his home. Bryan, Roosevelt, Taft, and Wilson, however, "took the stump" in their own behalf. On the night following the election the people anxiously await the returns. Sometimes, if the election has been very one-sided, the results can be delivered by ten o'clock. At other times it may hang in the balance for hours and even days. One of the most hopeful things in American national life is the spirit with which, after the excitement of the campaign, the people acquiesce in the result. The defeated party usually expresses some chagrin, but its members patiently settle down to await another chance four years later.

The electors meet on the second Monday in January at the capitol of each state and cast their ballots for Presi-

**Counting the
electoral
vote**

dent and Vice-President separately.¹ Three certificates of the result of the vote are then prepared, one of which is deposited with the United States district court, a second mailed to the President of the Senate, and the third dispatched to him by the hand of a special messenger. On the second Wednesday in February the Senate and House of Representatives meet in joint session. The President of the Senate opens the certificate from each state, and it is then handed to two tellers from each house, who read it to the assembly. An opportunity is next given for filing objections in writing.

Prior to 1887 there was much confusion as to the method of settling disputes with regard to the count of electoral votes. In 1876, when the race between Tilden and Hayes was so close that every disputed vote had to be counted for the latter in order to elect him, resort was had to an electoral commission. This body consisted of five senators and five representatives appointed by their respective houses, and of five justices of the Supreme Court, — four of whom, named in the act, were to appoint the fifth. The Senate appointed three Republicans and two Democrats; the House of Representatives three Democrats and two Republicans; and the four justices, two of whom belonged to each party, named a Republican. The most difficult question which they faced was that of double returns from each of two alleged state governments in Florida and Louisiana. In both states the commission, by a majority vote of one, accepted the Republican returns and every vote was counted for Hayes.

¹ Down to 1800, the electors voted for two persons, and the one receiving the highest vote became President, while the one receiving the second highest became Vice-President. In the election of that year, however, Jefferson and Burr tied for the presidency, thus throwing the election into the House of Representatives. In consequence the Constitution was amended to provide for a separate vote for each office.

To avoid similar difficulties in the future, the Act of 1887 declares that if any state has provided in advance a method of settling who have been duly chosen electors, such determination shall be conclusive. The governor is charged with the duty of certifying those who have thus been determined to be the electors of the state. No vote lawfully given by these certified electors can be rejected by Congress. Congress may, however, if both houses (who retire to their respective chambers for the purpose) agree, reject a vote on the ground that it has not been regularly given by such certified electors. If a question arises as to which of two or more state authorities is the one legally entitled to determine what electors have been chosen, or if no such determination has taken place in the state, only those votes are counted which the two houses concur in deciding were cast by lawful electors. When all questions with regard to the vote of a state have been settled, the two houses resume their joint session and go on with the count. When it has been completed, the result is announced and the candidates receiving the majority of the votes cast are declared President and Vice-President.

If, however, no candidate has a majority, it becomes the duty of the House of Representatives to elect the President, and of the Senate, the Vice-President. The Senate chooses the Vice-President by ballot from the two candidates highest on the list, each senator having one vote. The House of Representatives chooses the President from the three highest candidates. The voting is by states, each state having one vote. The way the vote of a state shall be cast is determined by the majority of the members from that state. If they are evenly divided, the vote of the state is lost. A majority of states is necessary to a choice. If the House does not succeed in electing

**Election by
the House
of Repre-
sentatives**

a President by the 4th of March, the new Vice-President becomes President. There is therefore little chance of reaching the 4th of March without a new President to take office. Only twice — in 1801 and 1825 — have Presidents been elected by the House of Representatives.

Inauguration

The President and Vice-President, together with the representatives elected with them, and one third of the senators, take office on the 4th of March. This was the day which the Congress of the Confederation selected for the inauguration of government under the Constitution. The ceremonies of inauguration are very impressive. There is a great civic and military parade, and an elaborate ball. The President takes the oath of office and delivers his inaugural address from a balcony of the Capitol. The oath is administered by the Chief Justice of the Supreme Court. The season is a very poor one for outdoor festivities. A more serious objection to the date of inauguration is the fact that a Congress and President elected in November must wait four months, and through a whole session of Congress, before assuming power. Each Congress has only two regular sessions, one of which occurs after its successor has been elected. This hold-over session has sometimes been used, as Adams and the Federalists used it in 1801, to embarrass as much as possible their successors. An outgoing President and Congressional majority are not under a sufficient degree of responsibility to be safe custodians of power. There seems, however, to be no chance of changing the day of inauguration. It is as firmly fixed by custom as if it were embedded in the Constitution itself.

Succession

The Constitution provides that the Vice-President shall succeed the President in the event of his removal, death, resignation, or disability. Congress has power to provide for further succession in case the Vice-President

suffers a like fate. In 1791, Congress fixed upon the President *pro tempore* of the Senate as next in order, and after him upon the Speaker of the House of Representatives. Under this system there was danger that the country might, in the event of the death of both the President and Vice-President, be left without a President, there being no President *pro tempore* or Speaker. It was also possible that the successor might not be of the same party as the President, and it is generally recognized that a change of party control ought not to result from such an accident as the death of the President and the Vice-President. An act approved January, 1886, provided that after the Vice-President the following officers should succeed in the order given: Secretary of State, Secretary of the Treasury, Secretary of War, Attorney-general, Postmaster-general, Secretary of the Navy, and Secretary of the Interior. If any of the above comes to act as President, he must convene Congress at once.

The President may be removed by impeachment, as may any of the executive or judicial officers of the United States. The proceedings for impeachment originate in the House of Representatives, which adopts "articles of impeachment" corresponding to the indictment in a criminal case, and appoints "managers" to conduct the case before the Senate. When the President is tried, the Chief Justice of the United States presides. Two thirds of the senators present are necessary to a conviction. The impeachable offenses are "treason, bribery, or other high crimes and misdemeanors," which probably means any offense against the interests of the nation. Our forefathers put great reliance in this institution. It has turned out, however, to be far from an active instrument of government. Only one President, Andrew Johnson, has been impeached, and he was acquitted because the

**Impeach-
ment**

vote (35 to 19) did not show a two-thirds majority against him. Only three officers have been convicted: Judge Pickering in 1804 (he was insane), Judge Humphreys in 1862, and Judge Archibald in 1912.

The presi-
dential term

Bryce and other foreign critics have commented adversely on the state of disturbance into which American life is thrown every four years by the inevitable presidential election. It seems to be one of the points of the superiority of the English or responsible-ministry form of government, that it does not involve any change of executive until public opinion, as expressed in the House of Commons, demands it. Periodical elections of a chief executive, however, are a necessity under our form of government. The only practical question for us is the length of the period. The Constitution of the Confederate States gave the President a six-year term and declared him ineligible for another. Bryce has thrown the weight of his authority in favor of such a change. The Democratic platform of 1912 called for a single term for the President, but without suggesting a lengthening of that term. It has been, since Washington set the fashion, an unwritten rule that a President might succeed himself once and only once. The first serious attempt to break down this rule was by Theodore Roosevelt in 1912. He, however, made the points that he was not a candidate for three consecutive terms, that he had been *elected* President but once and that the real danger comes from a President in office seeking to perpetuate himself in power. There is much justice in this contention. A President may do a great deal through the power of his position to secure at least a renomination from his party. Republican Presidents have been particularly favored in this regard because the Southern states, where almost the only Republicans are federal office holders, have had as

many delegates in the national convention as Northern states of equal population. There is one fatal objection to any limitation on the number of terms to which a President may be eligible, — the folly of changing administrations in a time of crisis. It would have been very absurd to have had a limitation which would have forbidden a second election to Abraham Lincoln.

The only limitations on eligibility to the presidency other than the third-term tradition are that he shall be thirty-five years of age, a natural-born citizen of the United States, and a resident of the United States for fourteen years. Far more interesting and significant are the circumstances of character and training which seem to make for success in the race for the presidency. It is a common saying that any American boy may aspire to become President of the United States. It is, however, true that in the one hundred and twenty-four years from 1789 to 1913, but twenty-four persons have been elected President. It is clear that accidents of birth, occupation, opinions, health, and a multitude of other things play a large part in determining who are to be Presidents. This is of course true with regard to the attainment of any of the big prizes of life. In the case of the presidency, however, there does not seem to be any regular path by which it can be approached — not to say reached — by those fortunate enough to have some chance to shape their careers according to their ambition. In England it is known that brilliant service in the House of Commons leads to a place in the ministry, and that advancement to the premiership itself depends on the degree of talent displayed in the lower ministerial positions. In the United States there is no such standard process for progress toward the presidency. An examination of the previous careers of our Presidents shows a great variety

Who are
chosen
Presidents?

of activities. One is immediately struck by the fact that service in Congress does not seem to open the doors of the presidency. If there is any stepping-stone to the presidency which has been trodden with any regularity, it is that of the governorship. That position gives an opportunity for the kind of achievement which creates a strong popular appreciation of capacity for the presidency. It has been true that, as Bryce has pointed out, our greatest men have not become Presidents. Calhoun, Clay, and Webster, the great political figures of their time, never attained the coveted prize. In more recent times the real leaders of opinion in the United States have not always occupied the White House. Availability counts more with a party in search of a candidate than other qualities. It consists in the first place in residence in certain large and doubtful states, of an absence of active enemies, of an unimpeachable private character, and if possible of a dash of military record. In spite of everything, however, our Presidents average as well as the premiers of the great democratic nations of France and England. There is in the presidential office attractiveness enough to inflame the dullest ambition. It is a prize worth having, and the contenders for it are normally men of the first order in our public life. That public life has not always attracted the best genius of America is largely due to the marvelous opportunities offered in industry and commerce by the development of the virgin economic resources of the United States.

SUGGESTIONS FOR FURTHER STUDY

The most interesting and significant discussion of the subject of this chapter is contained in BRYCE, chs. v, vii, lxix, lxx, lxxi, lxxii. RAY, pp. 145-171, contains an excellent account of the national convention, with ample bibliography. BEARD, pp. 166-186, is

valuable. See also suggestions appended to Chapter VIII for references on the campaign. JOHNSTON, ALEXANDER, *American Politics*, gives a brief account of each presidential campaign, with the issues and results. See also REED, pp. 230-240.

For teachers: STANWOOD, E., *A History of the Presidency* and *A History of the Presidency from 1897 to 1909*, gives a complete account of presidential elections from 1789 to 1909. Another book of great merit is DOUGHERTY, J. H., *The Electoral System*.

Topics:

An interesting class exercise will be to have each student look up the biography of some President or the history of some presidential election.

CHAPTER XX

THE POWERS OF THE PRESIDENT

The chief of
the state

THE framers of the Constitution discussed at great length whether the executive power should be intrusted to one man, two men, or a board. Happily they followed English and colonial precedent in giving it to one man, the President. He is, like the English king, the visible embodiment of the state for international purposes. To him are accredited the ambassadors or ministers of foreign countries. He appoints, in turn, our diplomatic representatives abroad. He conducts through them our foreign relations, and, with the advice and consent of the Senate, makes treaties with foreign nations. Again, like the English king, he is commander in chief of the army and navy. He has, too, the power of pardon and of proclaiming holidays, days of thanksgiving, or of fasting and prayer. While he does not maintain a "court," as does his royal prototype, he is expected to entertain with considerable lavishness and from time to time to receive the public. He is expected, as the representative of the nation, to participate in great celebrations. If there is a golden shovel to be wielded in breaking ground for some great enterprise, the President is selected to do it. If there is a button to be pressed to start some great event, the President is begged to officiate. The President is not surrounded by the formal etiquette which hedges in the crowned heads of Europe, nor does he appear in public with the same state and ceremony. His high office, however, brings him the sincere respect of every American citizen, whatever his party. No king or em-

peror will be more heartily supported by his whole people in time of national danger than our simple fellow-citizen whom we have elevated to the place of President.

The first Congress fixed the salary of the President at \$25,000, — a princely sum for those days. It remained at this figure until 1871, when it was increased to \$50,000. Beginning with the presidency of Mr. Taft, it became \$75,000. This salary cannot be increased or diminished during the term for which a President has been elected. The President is provided with a mansion, — the White House, — which has recently been enlarged and made adequate for the residence of our chief magistrate. For the maintenance of the White House Congress appropriates about \$135,000. The President also has an allowance of \$25,000 for traveling expenses and a contingent fund of \$25,000. If he prefers to travel by sea, a naval vessel or revenue cutter is at his service. Few Presidents have saved money while in office. Most of them leave the White House poorer than when they entered it.¹

Compensation

The executive power of the President is very similar to that of the colonial governor, who was himself a sort of miniature portrait of the English king. It is largely a matter of the power of appointment and removal. The President appoints, with the advice and consent of the Senate, practically all officers of the United States, including judges and officers of the diplomatic and consular services, except the minor officers whose appointment Congress has vested in the heads of departments. Over all officers whom he appoints, except judges, the President has an absolute power of removal. Over those appointed by the heads of departments the latter hold a

The executive power of the President

¹ The President of France, who is the only officer in the world to whom in this respect our President may be compared, receives (besides the Elysée Palace as a residence), for salary and expenses, \$240,000 per year.

similar power. This means that the President may direct the smallest detail of administration so long as he keeps within the limits of the law. Even where Congress has directly conferred certain powers or duties on a particular officer, as in the case of the Secretary of the Treasury, the method of their exercise or performance is within the control of the President. In such a case, while the President cannot compel a particular secretary to act as he directs, he may remove him if he does not. Andrew Jackson appointed and removed two Secretaries of the Treasury before he got one who would withdraw the deposits from the United States Bank. He finally, however, had his way. The President also draws great power from the duty of "seeing that the laws are faithfully executed," sometimes invading thereby the usual sphere of state action. It was under this power that Lincoln proceeded to subdue resistance in the Southern states, and that Cleveland employed federal troops against Chicago strikers who interfered with the passage of the United States mails.

The Cabinet No provision was made in the Constitution for a Cabinet. So far as any official advisory body was provided for the President, it was the Senate.¹ The first Congress created three heads of departments — the Secretaries of State, Treasury, and War — and an Attorney-general, making their tenure at the pleasure of the President. Washington began the practice of consulting these officers

¹ Some writers find in the words, "he may require the opinion in writing of the principal officer in each of the executive departments upon any subject relating to the duties of their respective offices," a basis for the Cabinet. The real intention of this clause was to prevent the heads of departments from becoming independent of the President. This was not an unnatural precaution in view of the fact that the Constitution did not provide the tenure of office of the executive officers, leaving this matter to Congress, which might have made it life, thus making them independent of the President.



The President's Cabinet in 1916. On the right side of the President are Secretary of State Robert Lansing, Secretary of War Newton D. Baker, Postmaster-general Albert S. Bursleson, Secretary of the Interior Franklin K. Lane, and Secretary of Commerce William C. Redfield. At the President's left are Secretary of the Treasury William G. McAdoo, Attorney-general Thomas W. Gregory, Secretary of the Navy Josephus Daniels, and Secretary of Agriculture David F. Houston. At the rear is Secretary of Labor William D. Wilson.

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at first singly, but later in meetings. Every succeeding President has kept up the practice, the Cabinet meeting on a day fixed by the President.¹

The President deals directly with the head of each department on matters affecting that department, and only matters of large concern are referred to the Cabinet as a whole. The President usually consults the Cabinet about the more important questions of legislation and executive policy, but he is under no obligation to do so. Lincoln, for example, said nothing about the Emancipation Proclamation to his Cabinet except to read it to them and say he had determined to issue it. The importance of the Cabinet depends on the relative weight of the personality of its members and of the President. The Cabinet meets in secret, and it keeps no records. Its votes are of no consequence, the President being free to follow its advice or not. It has no relations with Congress, although its individual members may urge before the committees of that body their recommendations concerning legislation affecting their departments.

For the control of the executive, we have seen that the President is furnished by the Constitution with ample power. This power, however, must always be exercised within the limits of the law, the courts having authority to restrain his agents or appointees from any act which is not warranted by law. The power of Congress over

**Limitations
on the Presi-
dent's exec-
utive power**

¹ The following officers have been from time to time added to the Cabinet: Secretary of the Navy, 1798; Postmaster-general, 1829; Secretary of the Interior, 1849; Secretary of Agriculture, 1889; Secretary of Commerce and Labor, 1903 (divided into two secretaryships, 1913); Secretary of Commerce, 1913; Secretary of Labor, 1913. There are thus ten Cabinet officers. Though all Presidents have consulted their Cabinets and the institution was the subject of frequent reference in the press and conversation, it was unknown to the law until 1907, when an act provided that "the compensation of . . . the heads of executive departments who are members of the President's Cabinet shall be at the rate of twelve thousand dollars per annum."

appropriations may be very effectively used to checkmate the President, as when Congress refused the appropriations necessary to carry on the Conservation Commission created by President Roosevelt and forbade the employees of other departments to assist that commission. The most constantly active limitation on the President's executive authority is the power of the Senate to refuse its assent to his appointments.

**Senatorial
courtesy**

In acting on appointments, the Senate has adopted a custom known as "senatorial courtesy," which decrees that the Senate will not confirm any appointment unless it is approved by the senator or senators from the appointee's state who happen to be of the President's political party. If there is no senator from the state in question who belongs to the President's party, the rule does not apply. The effect of senatorial courtesy is, if carried to its limit, to divide the President's patronage among the senators of his party. This may be destructive of his responsibility to the people for the character of appointments. On the other hand, it is inevitable that, because of the size of the country, the President should consult somebody acquainted with a state and its people in making appointments from among their number. Where senatorial courtesy is carried only to the extent of permitting a senator to veto a bad appointment from his state, it is not objectionable. Just what it amounts to at a particular time depends on the strength of the President and his general control over the legislature.

**President
and Senate
in foreign
affairs**

The President is charged with the duty of conducting the foreign relations of the country. He must, however, secure the consent of the Senate to treaties which he negotiates. The Foreign Affairs committee of that body is very active in matters relating to treaties, and it is not uncommon for the Senate, on its recommendation, to

refuse to ratify treaties which have been negotiated by the President. President Roosevelt, however, on one such occasion, put the terms of a treaty with San Domingo into force by simple agreement with the other contracting party, and, as no legislation was necessary to consummate it, got along very well. Since the initiative in all foreign affairs belongs to the President, he has an enormous advantage over the Senate. He can create situations which leave no choice as to the means of meeting them, and thus tie the hands of that body. The most striking piece of American diplomacy in recent years was the acquisition of the Canal Zone by President Roosevelt. To use his own language, he "took it," and the methods by which he did it were entirely beyond the control of the Senate. On the whole, the participation of the Senate in treaty making, by preventing secret alliances which might involve the United States in war, has had a very salutary effect. Diplomats chafe under the limitations it places on their activities. If, however, such a system had prevailed in European countries, the war of 1914 might have been averted.

We have already seen how, with the decline of the state legislatures, the governor has gained in power as the one direct representative of all the people. A similar evolution has taken place in the office of the President. As long as the conception of the reactionary George III as a ruthless tyrant remained a vivid impression in the American mind, Congress was the department of the federal government to which public confidence and affection particularly attached. With the disappearance from active life of those who had taken part in the Revolutionary struggle, a change began to appear. Andrew Jackson, as the successful candidate of the new democracy, claimed in a peculiar degree to represent the people against

The President as the peculiar representative of the people

the "interests" which he saw controlling Congress. From that time on the representative character of the presidency has vastly developed. Of course, weak Presidents and strong Congresses have helped to retard the movement. Even such keen observers as Bryce have been deceived by such passing phenomena into the belief that the President of the United States is, except in time of war, comparatively powerless. The war power of a President — all writers are agreed — goes almost to the point of dictatorship. As a matter of fact, even in time of peace it is to the President that the people now look for the direction of the ship of state.

**The weak-
ness of Con-
gress**

Congress has, by its failure to become genuinely representative of the whole people, contributed to the result. The average congressman, because of the attitude of the average voter of the average congressional district, is primarily interested in getting local appropriations for his district. New post offices, customhouses, harbor improvements, and other things which the government has to distribute, claim most of his attention. If he gets these things, or, to use the current political phrase, "gets his hands deep enough into the pork barrel," it makes little difference to his constituents what his vote may be on national questions. He therefore too often uses his vote to secure the support of the leaders of Congress for his local measures. A body made up of local representatives whose chief motive is to retrieve as large appropriations as possible for their constituents, can never be genuinely representative of the nation. Then, as we shall soon see, the organization of Congress has been such as to make it almost impossible for the people to hold its members responsible for the carrying out of any constructive policy. The President, therefore, has become the only

real representative of the whole people, its only hope of controlling the government in its own interests. In consequence, it has come to demand that the President take the lead not only in matters properly pertaining to the executive department of the government, but also in matters of legislation as well.

The President has the duty of communicating to Congress information concerning the state of the nation. He usually includes in this "message" a number of recommendations for legislative action by Congress. He also makes from time to time such other recommendations as he desires. Of recent years the bulk of the annual message has become enormous. President Wilson at the beginning of his administration adopted the wise policy of frequent brief messages, each containing only a few matters of recommendation. Washington and Adams delivered their messages orally to both houses of Congress. Jefferson preferred to send his messages in writing. Every other President used written messages until Woodrow Wilson reverted to the original practice. His messages have been read to both houses assembled in the hall of the House of Representatives. There can be no doubt that the spoken message gets keener attention and that the effectiveness of the argument is greater because of the power of the President's personality.

The President's message

More important than his power of recommending measures is his power of veto. It has been rare, save during the quarrel between Andrew Johnson and Congress, that a bill has received the two-thirds majority necessary to pass it over his veto. The Presidents before Jackson used it only to prevent the passage of what they regarded as unconstitutional legislation. Jackson vetoed bills freely, because he objected to their policy. The veto remained, however, undeveloped as a regular instrument of govern-

The President's veto

ment until the administration of Grover Cleveland. He vetoed a great number of bills, and it is now clear that if Congress passes any measure distasteful to the President, he will veto it. Congress has sometimes been able to evade the President's veto by tacking objectionable provisions as "riders" upon essential bills, especially appropriation bills. Since the President must sign or reject bills as a whole, he thereby is obliged to acquiesce in legislation of which he does not approve.

The President and Congress

For the control of Congress, the Constitution has provided the President only with the power of recommending measures to its consideration, the power of convening them in extra session, and the power of veto. The power of recommending measures to Congress is by no means tantamount to securing their adoption. There is nothing to compel Congress to adopt them. There is no such effective discipline behind the President's program as there is behind the program which the English Cabinet announces at the beginning of each session of Parliament. This is largely because defeating the ministry means a change of the party in power, while defeating the President involves no such change. The principal element of power in being able thus publicly to call the attention of Congress to the things which he proposes for their approval, is the publicity given his messages. It is a small and benighted paper which does not publish the President's message in full. It is sent in advance to every paper in the country, subject to release on the day on which it will be actually delivered before Congress. No other utterances in America are anything like so widely distributed. The message becomes, therefore, a wonderful means of giving direction to public opinion. It is really addressed to the people, and it is through them that its effect on Congress is exerted.

THE PRESIDENT'S ENGAGEMENTS

Wednesday, January 12, 1916

- ✓ 10:00 a.m. John H. Fahey
- ✓ 10:00 a.m. Committee of the Pittsburgh Chamber of Commerce - to extend invitation. (Joseph F. Guffey)
- ✓ 10:00 a.m. Senator Hoke Smith
- ✓ 10:00 a.m. Rep. Tribble, of Georgia
- ✓ 10:00 a.m. Rep. Heflin, and members Alabama Delegation
- ✓ 10:30 a.m. Rep. Fitzgerald
- ✓ 10:45 a.m. Senators Beckham and James
- ✓ 11:00 a.m. The Speaker
- ✓ 11:30 a.m. Rep. Eagle, of Texas
- ✓ 11:45 a.m. Senator Lewis
- ✓ 12:00 noon Mr. Stevens of Federal Trade Commission
- ✓ 12:15 p.m. Governor Major, of Missouri
- 12:30 p.m. Judge Westcott, New Jersey
- 5:30 p.m. THE WHITE HOUSE:
Representative Padgett
- Belasco Theatre

A busy man must be systematic to get through a day's work. The President has his engagements for each day listed and checks them off as they are met.

The power of convening Congress in extra session not only provides for the emergencies which arise in a nation's life, but gives a determined President a means by which he can prevent Congress from dodging the passage of legislation in which he is interested. No better example of this has ever been afforded than the extra session called by President Wilson immediately after he came into office and continued under his influence until the beginning of the regular session of 1913. Congress was called together to deal with the tariff and currency questions, to the reform of which the President had pledged himself and his party, and he insisted on the Democratic majority in Congress living up to that pledge. It would have been futile for Congress to adjourn, — as many of its members undoubtedly desired, — for the President would have called them back without a moment's delay.

The veto has much more force than simply as a negative check on legislation after it has passed both houses. The fear that the President will use his veto on their pet bills — whether this fear arises from a direct threat or not — is a very powerful influence in holding members in line for "administration measures." That Presidents do manage to convey to members an impression that they will use the veto as a club on their enemies is certain. It is one of the ways of using the "big stick." Another is the use of patronage. Every member of Congress is eager for a share in the President's patronage. His influence with his local machine depends to a considerable extent on what he "can land for the boys." It is easy for the President to make use of the offices within his gift as a weapon against those who balk at his program. Still another way of wielding the "big stick" is to appeal, or be ready to appeal, from the member of Congress to the people of his district. The President is

The "big stick"

such a big personality and he has, so much more than any other man, the ear of the people, that he can make things most uncomfortable for the congressman whom he puts on his blacklist. Many people object to the use of the so-called "big stick." They say that it is unconstitutional and immoral for the President to force members by threats and promises to vote for measures which they would not on their own judgment approve. The President, nevertheless, is expected to control Congress, and unless he does so he cannot be in the eyes of the people a successful President. President Taft, who early in his term took the ground that it was the business of Congress to legislate, was charged with evading his duty. The President, however, has no constitutional way of controlling legislation. His secretaries cannot appear on the floor of either house to convince it of the merits of his program. He cannot count on the unhesitating party loyalty of his followers in Congress. Repeated experiments have proved that Congress cares little for the pledges of the party platform or for any kind of preëlection promises. The only way in which the President can carry out his policy is by the leadership of public opinion, to which Congress is somewhat responsive, and the application of the "big stick." The people demand the results. They are not nicely critical about the means employed.

**Defects of
the present
system**

To sum it up, it may be said that strong Presidents get what they want to some degree. Weak Presidents get almost nothing. In neither event is there any likelihood of a really consistent policy being worked out. The President's means of control are too irregular. By their very nature they are compelled to be reserved for the few measures which the President deems most essential. Even the most docile Congress cannot be driven all the time without risk of rebellion. The vitally important

matter of appropriations, in which we have seen that the members of Congress and their constituents are most interested, have to be left to the almost undirected will of the legislature (see Chapter XLI). When, as not infrequently happens, one or both houses are opposed to the President politically, his power to control Congress by any method disappears and all chance of a coherent policy is lost. On the whole, our system of a President independent of Congress has made impossible the harmony between the legislative and executive departments which exists in countries which have adopted the English system of a responsible ministry.

No fundamental change in our arrangements is possible at the present time. It would, however, help matters somewhat if the members of the President's Cabinet were given the right to sit and speak in either house of Congress. There would be less occasion for the use of extra-legal methods if measures could be directly advocated by representatives of the President on the floor. There would be a greater chance of the departments receiving fair treatment from Congress in appropriations and other legislation than at present. No amendments to the Constitution would be necessary for this change. It could be effected by a simple alteration of the rules of the two houses.

A partial
remedy

SUGGESTIONS FOR FURTHER STUDY

BRYCE, chs. vi, xx, and xxi, deserves first mention. BEARD, pp. 187-214, and *Readings*, pp. 176-196, will be useful. HASKIN, F. J., *The American Government*, gives a picturesque account of the multitudinous activities of the President. See also REED, pp. 240-246.

For a more extended discussion see FINLEY AND SANDERSON, *American Executive and Executive Methods*. Ex-President Cleveland gives an extraordinarily illuminating view of the power of the office in *Presidential Problems*, pp. 3-117. Two volumes composed of lec-

tures by ex-President Taft, *Our Chief Magistrate and His Powers* and *The Presidency: Its Duties, Its Powers, Its Opportunities, and Its Limitations*, contain the latest and perhaps the clearest treatment of the whole subject.

Teachers will find valuable MASON, E. C., *The Veto Power*, Harvard Historical Monographs, No. 1; WILSON, WOODROW, *Congressional Government* (on the relation of the President to Congress); LEARNED, H. B., *The President's Cabinet* (contains an elaborate bibliography).

Topics:

The Cabinet.

The Veto.

"Senatorial Courtesy."

The Treaty-making Power.

The Power of the President over Congress.

The History of the Cleveland, McKinley, Roosevelt, Taft, and Wilson Administrations.

CHAPTER XXI

THE CONGRESS OF THE UNITED STATES

THE framers of the Constitution debated long and earnestly over the form of the legislature. They followed colonial and English precedents in making it bicameral. The fears of the small states that they would be swamped by their larger fellows led them to demand equality of representation, which, as you will remember, they had enjoyed in the Congress of the Confederation. To this demand the large states yielded sufficiently to concede equality of representation in the upper house or Senate. That fear of the consequences of the direct control of the government by the people to which we have already referred resulted in giving the election of senators, not to the people, but to the state legislatures. The Senate, therefore, became in a peculiar sense the representative of the state governments. The senatorial term, which was fixed at six years, was another product of the reactionary spirit of the convention. To make the Senate a more secure bulwark against the passing opinions of the people, it was provided that one third of its members should retire every second year. Thus even the unanimous sentiment of all the state legislatures could not change more than one third of its members at once. The members of the lower house, or House of Representatives, were to be apportioned among the several states according to population. They were to be elected for the comparatively short term of two years by those persons qualified to vote for members of the lower house of the state legislature. The House of Representatives, there-

The form of
the legis-
lature

fore, seems to have been especially designed to represent the people. The Seventeenth Amendment, however, providing for the election of senators by popular vote, has put it more on an equality with the House in this respect. The fact, however, that 81,875 people in Nevada choose as many senators as 9,113,614 in New York, and that forty-eight senators are elected by sixteen and one half millions and forty-eight by the remaining seventy-five millions of our population, still leaves the Senate a very imperfect representative of the people.

**Powers of
the two
houses**

Any bill, except those raising revenue, may originate in either house. By custom the big appropriation bills originate in the House of Representatives. The Senate, however, uses so freely its power to amend revenue and appropriation bills and is so successful in forcing the House of Representatives to agree to its amendments, that it may be said to exercise quite as much influence in matters of finance as the lower house. The only other special privilege of the House of Representatives is that of beginning impeachment proceedings against the President or other officers of the United States.

The Senate has the exclusive right to try impeachments. It also possesses the right to advise and consent to treaties and appointments made by the President. Those powers were given to it because similar powers of advising the executive belonged to the upper houses of the colonial legislatures. It was probably the intention of the framers of the Constitution that the Senate talk these matters over with the President and decide them with him. Washington on more than one occasion came into the Senate in person to discuss his proposals. The Senate, however, clearly showed that they regarded these visits as an intrusion, and after a few efforts Washington gave

present Treaty.

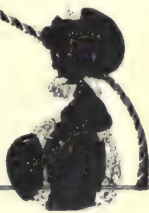
Article V.

The present Treaty shall be ratified by the President of the United States, by and with the advice and consent of the Senate thereof, and by His Britannic Majesty; and the ratifications shall be exchanged at Washington or at London at the earliest possible time within six months from the date hereof.

In faith whereof the respective Plenipotentiaries have signed this Treaty and thereunto affixed their seals.

Done in Duplicate at Washington, the 18th Day of November, in the year of Our Lord one thousand nine hundred and one.

John Hay
Paunceforte.



Last paragraphs and signatures of the Hay-Pauncefote Treaty of 1901, which abrogated the Clayton-Bulwer Treaty of 1850 (except Clause 8) and left the United States free to build the Panama Canal without the participation of Great Britain.

up the attempt really to consult with it. No subsequent President has ever gone to the Senate on such an errand. Of course, rapid growth in the number of senators soon destroyed any possibility of its being an actual council to the President. The President now communicates to the Senate in writing his finished acts, which they accept or reject in "executive" or secret session.¹ In the case of appointments, he consults with the senators from the state from which the appointee comes. The President is always in close touch with the Senate Committee on Foreign Relations, and thus a few senators are consulted in advance with regard to treaties. In important cases, other senators may be consulted in advance of their actual submission to the Senate. The Senate is sometimes said to "amend treaties." This, strictly speaking, it cannot do. In refusing to ratify a treaty, the Senate may indicate what changes in its text it considers desirable. Such changes may or may not become the basis of future negotiations between the President and the representatives of the foreign country in question.

Contrary to the general experience of other countries, the so-called popular house has not reduced the upper to the second place. The Senate has had the advantage of the House of Representatives in its smaller numbers, enabling it to transact business more efficiently. The long term which makes for experience is another factor in its superiority. The fact that two thirds of its members are always old members gives it a solidarity and sense of its own individuality which is lacking in the lower house. Further, the senators themselves are not only on the average abler and more experienced than the representatives, but it not infrequently happens that a senator

**Relative
position of
the two
houses**

¹ The newspaper correspondents usually have information about these secret sessions. Ninety-six men rarely keep a secret.

is the political boss of some at least of the representatives from his state. The share of the Senate in executive functions gives to the senators individually and collectively a source of influence entirely denied to the House of Representatives. As a result, the Senate plays a larger part in leading the public opinion of the nation than does the House.

The growth
of the two
houses

In the first session of Congress there were but twenty-four senators, — not too many for an advisory council to the President. The number grew rapidly with the admission of new states. From 1820 to 1860 these admissions were carefully timed to preserve the balance between the free and slave states. In 1860 there were sixty-six senators. There are now ninety-six, and as there are no more territories out of which states may be made, it will probably remain at this point, unless — which is very unlikely — some state is divided.

The Constitution of the United States provides that members of the House of Representatives shall be apportioned among the several states in accordance with their population, as determined by each decennial census. There may not be more than one representative for each 30,000 population, and each state is entitled to at least one, irrespective of its population. The Constitution arbitrarily fixed the numbers of the first House at sixty-five. Each reapportionment has seen an increase in the ratio of population to representatives, until it is now 212,407. These changes of ratio have never, except in 1840, been great enough to prevent an increase in the size of the House. Whenever the task of reapportionment comes up, Congress has to choose between actually taking away representatives from some of the slow-growing states and increasing the total number of members. It has preferred the latter alternative. According to the appor-

tionment of 1910 there are 435 members of the House of Representatives.

The increase in the size of the House of Representatives has been attended by considerable loss in its efficiency as a legislative body. The mere numbers of the House have made it necessary to adopt rules for the limitation of debate, which has made it not much more than a panel for the selection of committees and a huge voting machine. Until very recently it was thought necessary to provide each member not only with a chair, but with a desk. These desks enabled the members to write letters, and indeed do almost everything except attend to the proceedings of the House. The constant rustling of papers and slamming of lids, clapping of hands to arrest the attention of the page boys, added to the magnificent distances of the hall, made it very difficult for the ordinary member to be heard. Only those possessed of good lungs and exceptional oratorical gifts could claim the genuine attention of the House. Others were unheard except by such interested members as might gather about their desks. Even in the case of speakers of great force and ability it is difficult to engage in serious and effective discussion of a measure when shouting at the top of one's lungs. After years of agitation, the House finally provided for removing the desks and reducing the seat area. This was made easy by the completion of a great office building in which each member has a room in which to conduct his correspondence and other business. The members of the House now sit on benches arranged in concentric half-circles much like the seats in a theater. Only those are present who are disposed to listen to what is going forward. The new arrangement is much to be preferred to the old. The great galleries afford room for twenty-five hundred persons, and on the occasion of an

Effects of
this growth

important debate are crowded with spectators.¹ The Senate chamber is much smaller than the hall of the House of Representatives. Each member has a desk, and deep galleries and lobbies surround the room. Debate in the Senate is naturally much more extended and effective than in the House. There is less noise and better attention.

Compensation of representatives and senators

The Constitution provides that senators and representatives shall receive a compensation for their services which shall be determined by law. The first Congress debated at great length over the amount of compensation, and finally fixed it at six dollars a day. It is interesting to recall that it was severely criticized by the contemporary press for fixing the rate so high. This per diem was gradually increased until 1856, when a salary of \$3000 a year was provided. It was raised to \$5000 in 1865, and to \$7500 in 1907. In addition to his salary, each senator and representative is entitled to a traveling allowance or mileage of twenty cents a mile. This amounts, in the case of a representative from the Pacific Coast, to about \$2500 a term. Representatives are allowed \$1500 each for clerk hire. The more important committees have salaried clerks who act as secretaries for their chairmen. In these and other cases, the whole or a large part of the \$1500 is practically added to the salary of the member. Senators, except committee chairmen, have \$1800 for clerk hire. There is also a small allowance for stationery. Members of both houses have the right to "frank," or send free under their signatures, any mail they may desire.

The members of both houses going to or coming from a session are privileged from arrest, "except for treason, felony, or breach of the peace." The effect of this pro-

¹ The position of the Speaker and clerks and of the lobbies are as we have already described them for the halls of our state legislatures.

vision is to protect them from arrest in any civil case or for a simple misdemeanor. It is a relic of ancient times in England, and is of little importance. The Constitution also declares that "for any speech or debate in either house, they shall not be questioned in any other place." This secures absolute freedom of speech in the House and Senate, so far as any outside authority is concerned. If a member indulges in remarks that are indecent or unduly defamatory of his opponents, he may be disciplined by the body to which he belongs. With the "concurrence of two thirds," a member may even be expelled. No senator or representative may during his term be appointed to any civil office which has been created, or the salary of which has been increased, during that period.¹ No person can be at the same time an executive officer of the United States and a member of Congress. The intention of both the above limitations was to prevent the legislature from being corrupted by executive appointments, although experience has hardly warranted the fears of the framers in this particular.

**Privileges of
senators and
representa-
tives**

The Constitution prescribes that Congress shall meet annually on the first Monday in December, unless a different day is appointed by law. Congress has never exercised its privilege of changing the time of meeting. Since the terms of representatives and senators begin with the 4th of March following their election, unless called in extra session by the President a house does not meet for its first session until thirteen months after its

Sessions

¹ One of the best illustrations of the working of this rule is to be found in the circumstances surrounding the appointment of Mr. Knox as Secretary of State by President Taft. Knox was a member of the Senate in 1907, when the salaries of all Cabinet officers were raised to \$12,000 per year. He was still serving part of the same term when President-elect Taft selected him for his future Secretary of State. Before he could accept, however, it was necessary for Congress to reduce the salary to the figure from which it had been raised in 1907.

election. The legislative period for which the house is elected is called a "Congress," and the journals and debates of the two houses, and other documents published by their authority, bear the number of the Congress and the number of the session to which they refer, — as "45th Congress, First Session," or "62d Congress, Third Session." The first session of each Congress is sometimes spoken of as the "long session," and the second, extending only from December to March, as the "short session." The President may convene Congress in extra session, and this practice is apparently becoming more common. The President does not have the power usually possessed by the chief of state in European countries of dissolving the houses, or even adjourning them, except when they disagree as to the time of adjournment. Neither house may adjourn for more than three days, nor to a different place, without the consent of the other. Bills introduced at one session of a "Congress," but not passed, are taken up at the next session of the same "Congress" where they were left at the end of the last. All bills die at the end of a "Congress."

**Record of
proceedings**

The Constitution requires each house to "keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may, in their judgment, require secrecy." The journal is simply the record of bills and resolutions submitted, motions made and action taken, with, in certain cases, the names of those voting "aye" and "no." It has long been the custom to publish it all, even that part relating to the so-called "executive" sessions in which appointments and treaties are discussed by the Senate. In addition to their journals, both houses publish their debates in full in the Congressional Record. The Record appears daily while Congress is in session and contains not only what is actually said in Congress, but

other matter which either house has given leave to print. The House of Representatives is especially liberal in granting this privilege. Many a speech franked to the "folks at home" by an aspiring member of the lower house was never actually delivered. The member simply said a few words and then asked leave to extend his remarks in the Record. Sometimes foolish members even insert phrases like "[applause]" or "[loud applause]" in these printed speeches. The dignity of senators does not allow them to "extend" their remarks, the freedom of debate making such a practice entirely unnecessary. In connection with national campaigns millions of portions of the Record are franked to voters.

The second quarter of the nineteenth century was the golden age of the Senate, when it was adorned by such illustrious personalities as Calhoun, Clay, and Webster. No legislative assembly in the history of the world has ever surpassed the United States Senate from 1830 to 1855. Since the Civil War it has gradually declined and now contains few men of the first magnitude, but it still continues to be a body of great efficiency and power. It has become, in a sense, a rich man's chamber. Many men of great wealth consider a term of service in the Senate a fitting climax to their careers and have managed to secure an election from a state legislature. Still more of its members are lawyers, — not the general practitioners of days gone by, like Clay and Webster, but more especially corporation attorneys, some of them of great eminence in their profession. A few senators are simply state bosses who have used their power to get into the Senate. These men are — to use Bryce's phrase — "rich because they are senators." Taken as a whole, the senators represent the best our public life calls forth. Their fault is a bias toward wealth. Their great merit

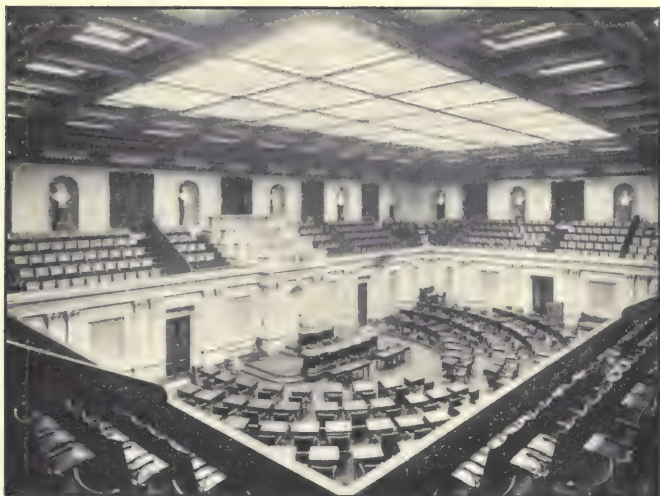
**Personnel of
the Senate**

is a high average of ability and efficiency in dealing with legislation. What will be the effect of the Seventeenth Amendment on the personnel of the Senate remains to be determined. It probably will not be very marked, as a majority of the states had before its passage, by a variety of legal subterfuges, provided for the popular election of United States senators.

**Organiza-
tion of the
Senate**

The Senate is presided over by the Vice-President of the United States. He is not a member of the Senate and plays a very small part in its internal politics. He may vote only in case of a tie. In the absence of the Vice-President the Senate is presided over by a president *pro tempore*, elected by the Senate from among its own number. It is usual for the Vice-President early in each "Congress" to absent himself for a few hours to allow the choice of the president *pro tempore*, who holds the position for that session. He may vote like any other member. The presiding officer of the Senate must recognize the first person who rises, and all points of order are decided by the Senate itself. The committees of the Senate, to which all bills are referred and through which most of its work is done, are chosen by ballot. As a matter of practice, the majority party in the Senate is entitled to a majority on each committee. Agreement having been reached as to the number of majority and minority members on each committee, the actual membership of each is determined by the caucus of each party. In the sixty-third Congress there were seventy-five of these committees. Every senator is a member of several of them, and each of the older members is chairman of some committee.

The United States Senate is the only important legislative body in the world in which there are no limitations on the freedom of debate. There is no such thing as the



The national Senate chamber at Washington.



President Wilson reading his message to the Sixty-fourth Congress, assembled in the Hall of Representatives, December 7, 1915.



"previous question" in the Senate. A senator once on the floor can speak as long as he desires. He may yield the floor to another senator, and when this speaker is through the right to it goes back to the original possessor. This privilege has been used by leather-lunged senators to talk measures to death at the close of a session. At any time, four or five determined senators may so long delay the vote on a bill as to force the majority at least to compromise. These efforts of the minority to block the wheels of legislation are known as "filibusters." The most famous Senate filibuster was that against Senator Lodge's "Force Bill," which the Democrats defeated by this means. In spite of occasional inconvenience, the Senate cherishes its freedom of debate. The body is so small and the personal relations of senators so close as to prevent abuse of the privilege except in rare instances.

**Debate in
the Senate**

The Constitution of the United States did not say whether representatives should be elected by districts or at large, and it was not until 1842 that Congress provided that they should be elected by districts. Even now, where, following a congressional reapportionment which has increased its representation, a state has not had time to rearrange its districts, one or more congressmen may be elected at large. North and South Dakota are specifically allowed to elect at large. The process of redistricting, which occurs at least once in ten years, is often the occasion of a "gerrymander." Happily a Republican gerrymander in one state usually sets off a Democratic gerrymander in another. More important even than the practice of district elections is the custom that a candidate must reside in the district from which he hopes to be elected. It has helped to make the House a body of local representatives. It has kept many good men from becoming candidates. It is one of the little ironies of

**Election of
representa-
tives**

American politics that some districts will be rich in congressional material, while in others there is none. It tends to reduce a member's chance of reëlection. If the accidents of politics turn his own district against him, no matter what the merit of his services there is no other constituency open to him. This custom has all the force of law and there does not seem to be any prospect of change.

**Personnel of
the House
of Repre-
sentatives**

The members of the House of Representatives are, on the average, of higher intelligence and training than state legislators, but lower than United States senators. As a body they rank somewhat higher than the membership of the lower houses of other countries. Few have attained genuine eminence in any walk of life. Particularly noticeable by their absence are the men who in England or France would be in the cabinet or governing executive body. The majority of the representatives are practical, hard-headed men of good native capacity who have worked their way up in a strenuous world. About half of them are lawyers, — usually not of the first rank, — and a goodly number are manufacturers, merchants, and farmers. There is a sprinkling of journalists. Workingmen in the sense of artisans are rare. "Five representatives out of six," says Bryce, "are politicians, pure and simple." In other words, whatever their original occupation may have been, they have pretty well abandoned it for politics. Usually more than one half have graduated from a university or college. The leaders of the House are in general the men who have served in it the longest. The method of transacting business through committees puts a premium on adroitness in handling men and a knowledge of the procedure of the House, both subjects in which experience is the best teacher. The House has had leaders of the first order of political ability, like the

matchless Henry Clay, but they have been the exception, not the rule. It is, when all is said, a body of high average ability, led by men who excel in legislative experience rather than in eloquence, learning, or statesmanship.

The House of Representatives has full power over its own organization, electing a Speaker, clerk, sergeant-at-arms, etc. Each new House is called to order by the clerk of the previous House, who presides until the election of a Speaker. Each party has previously nominated its candidate in caucus, and the nominal election in the House is usually a mere formality. Sometimes, however, when there are more than two parties, the choice of a Speaker is a matter of many weeks of bitter struggle. The House as a body nominally appoints all its committees. In practice, the caucus of the majority party selects the chairman and the majority of the members of the Committee on Ways and Means, the caucus of the minority party selecting the remainder. When this selection has been ratified by vote of the House, the Committee on Ways and Means, or more accurately its chairman, selects the chairmen and members of the other committees, the House adding its formal approval.

Organiza-
tion of the
House of
Representa-
tives

SUGGESTIONS FOR FURTHER STUDY

No more pertinent and suggestive criticism of our national legislature is to be found than that of BRYCE, chs. x-xix. See also BEARD, pp. 231-252, and *Readings*, pp. 214-235. REINSCH, P. S., *American Legislatures and Legislative Methods*, has much good material for use in connection with this and the succeeding chapter. A copy of the Congressional Directory is indispensable for a study of the personnel of the two houses. The Congressional Record should be secured where possible, and samples of extracts from it and other documents should be obtained from your senator or representative.

Teachers may likewise make use of HAYNES, G. H., *The Election of Senators*, and COMMONS, JOHN R., *Proportional Representation* (on the "gerrymander").

Topics :

The Biographies of Senators and Representatives. (The results can be tabulated so as to show the age, occupations, education, and previous political experience of each member.)

The Franking Privilege.

The Congressional Record.

The House and Senate Chambers.

The Election of Senators.

"Gerrymanders."

CHAPTER XXII

THE MAKING OF A FEDERAL LAW

WE have already seen how laws are made in state legislatures. The process of making a law in the United States is similar in its general outlines, but it differs so much in detail that it is desirable for us to follow the progress of a bill through the House of Representatives.

**Differs from
state practice**

Any member of the House may introduce bills, and this privilege is exercised very freely. In the sixty-first Congress there were 33,015 bills introduced in the House alone. No consideration can be given to most of this vast number of bills, which greatly increases the importance of the committee system. There is no distinction made between the bills of ordinary members and of those who represent the administration. Bills are introduced by filing them with the clerk. Their titles are printed in the Journal and Record, which constitutes their first "reading." They are then delivered to the Speaker, who refers them to committees in accordance with the rules of the House. At the third session of the sixty-third Congress there were fifty-eight of these committees, the most important being those on Ways and Means, Appropriations, Judiciary, Banking and Currency, Interstate and Foreign Commerce, Rivers and Harbors, and Rules. These committees, generally speaking, consist of from seven to twenty-one members, the latter being the number in fourteen and the former in eleven cases. The work of the committees in considering bills is similar to that of the committees in a state legislature, and the same criticism of the system applies in this case. There

**Introduction
and refer-
ence to
committee**

is the same failure to hold the committees clearly responsible and the same sort of log-rolling methods in securing favorable committee reports.

**The Speaker
prior to 1909**

We have already seen that the Speaker in the colonial legislature was the chief popular representative of the people, and as such had a degree of authority rather unusual in such a position. The tradition thus established continued to have weight in the state legislatures after the Revolution and in the Congress under the Constitution of 1787. It was only natural, therefore, that the Speaker should have been intrusted with the appointment of committees. As time went on and the number of bills introduced in Congress increased, the part of the committees in determining which of them should come before Congress for consideration became more important. They smothered most of the bills introduced, and their power in this regard became very arbitrary. We have already seen how poor the facilities for debate are in the House of Representatives, and it need not surprise us to learn that practically all of its real activities are carried on in committee. It is only a step from the realization of this fact to an understanding of the power of the Speaker who appointed these committees. The power of each member of Congress depends upon the committees to which he is appointed. The Speaker could make each appointment the price of submission to his leadership. He therefore became almost the absolute dictator of the House.

**Rules
Committee**

With the increase in the number of bills introduced and the number of committees, the time came when the number of measures reported from committees was in excess of what the House could pass upon. This overcrowding of the calendars meant that important measures might be lost because other and less important measures stood ahead of them. The House met this difficulty in two

ways. One was by giving certain committees the right to call up their measures in preference to the general run of bills. Among these committees were those on Ways and Means, Appropriations, Elections, and Rivers and Harbors. The second method of relief from overcrowding was through the Rules Committee. This committee had been originally simply the committee to which proposed changes in the rules were referred. It developed the privilege of reporting at any time motions to suspend the rules and establish a special order for the consideration of a bill at a specified time. It thus had in its hands the power to determine what bills should be considered by the House. Down to 1910 this committee consisted of five members, including the Speaker, who always appointed the two next most influential members of the majority party as his colleagues. These men were of course his most intimate associates and lieutenants. Thus was established another link in the chain with which the Speaker bound the House. Add to all this the fact that the Speaker would recognize for the purpose of making motions only those members whom he pleased, and the dominant part he played in lawmaking is easy to understand.

So long as he exercised his power simply as a fairly faithful representative of the majority party, the only objectors were to be found among the minority. When, however, as was the case with Speaker Cannon, the power came to be used as a personal weapon and against measures which many of the majority party desired to see adopted, it was not surprising that a revolt ensued. The attack upon Cannon took the form of a reduction of his power. This was accomplished by increasing the membership of the Committee on Rules to eleven; by prohibiting the Speaker from being a member of that committee;

The revolution of 1910

and by vesting its election in the House itself. The Speaker was thus shorn of one of his most potent weapons. This process was still further carried out in the sixty-second Congress by giving the appointment of all committees to the House itself. We have already seen in the previous chapter that this election by the House is only nominal, the choice being left practically to the chairman of the Committee on Ways and Means. The result is that he has now become more influential than the Speaker. The latter continues to fill a large place in the public eye, but this is not accompanied by the power which Cannon, Reed, or Carlisle possessed. It may still be doubtful whether any great gain has been accomplished by shifting the Speaker's influence to the chairman of the Committee on Ways and Means. We had, prior to 1910, come to regard the Speaker as responsible for what went on in the House. It will be years before the people at large will come to have a similar feeling toward the chairman of the Committee on Ways and Means.

When a bill is reported from the committee, it is placed upon one of three calendars, in the order in which it was reported from committee. The first is known as the "Calendar of the Committee of the Whole House on the State of the Union," and is usually referred to as the "Union Calendar." On it are placed all bills relating to taxation, the general appropriation bills, and other public bills directly or indirectly making appropriations. The second is known as the "House Calendar," to which are referred all other public bills. The third is the "Calendar of the Committee of the Whole House," upon which are placed all bills of a private character.¹

¹ Mostly claims against the government and bills granting pensions. A new rule, adopted in 1909, provides for a fourth calendar for unanimous consent. A member of the House may have any bill on the House or Union calendar transferred to this fourth calendar. On the first and third Mondays

Second reading is an actual reading in full of the bill for the purpose of offering amendments. The "morning hour" — that is, the period of each session after business on the Speaker's table and unfinished business have been disposed of — is devoted to the call of committees in regular order.¹ Each committee when named may call up any bill previously reported by it which is listed on

The "morning hour"

of each month and on the last six days of the session, the first order of business is the "calling" of the bills which have been for three days upon the calendar for unanimous consent. If an objection is made to the consideration of any bill so called, it is stricken from the calendar. It may be put back once more upon the application of any member, but if objected to again it loses its place permanently and goes back to the calendar from which it was taken. There is still a fifth calendar, of "Motions to Discharge Committees," upon which any member may place a motion to discharge a committee from further consideration of any public bill which has been in the hands of the committee for fifteen days. The object of this provision is to prevent the absolute control of committees over bills in their hands. It sometimes happens that a bill which the majority of the House very much desire falls into the hands of an unwilling committee. The discharge of a committee, however, is a step which the House is very reluctant to adopt. A general resort to this expedient would break down the committee system. The Calendar of Motions to Discharge Committees is called on Mondays after the Unanimous Consent Calendar and motions to suspend the rules have been disposed of.

¹ The House of Representatives meets as a body at twelve noon of each legislative day. The order of business is: *First*, prayer by the chaplain; *second*, reading and approval of the Journal; *third*, correction and reference of bills; *fourth*, business on the Speaker's table, consisting of such matters as messages from the President, bills returned from the Senate, etc. The *fifth* order is unfinished business which was being considered in the House at the close of the previous day's session, except certain matters which have special periods set apart for them. The *sixth* order is the "morning hour" for the consideration of bills called up by committees. The *seventh* is the motion to go into the Committee of the Whole House. The *last* is orders of the day, *i.e.* measures which the House has voted to consider at that time. Certain days in the week are set aside for particular kinds of business. Wednesday of each week is set aside for the call of committees, all of the subsequent orders of business being omitted on that day. On Friday of each week, after the business on the Speaker's table has been disposed of, a motion is in order for the House to go into the Committee of the Whole, to consider bills on the private calendar. The second and fourth Mondays are set apart for consideration of matters relative to the District of Columbia. The Speaker may entertain a motion to suspend the rules only on the first and third Mondays of each month, and during the last six days of the session.

the House Calendar. This call of committees goes on until a motion is made to go into Committee of the Whole House. The call is resumed on the next occasion at the point where it was left off. Bills on the Union or private calendars are called up by means of motions to go into Committee of the Whole House for the purpose of considering the bill in question. For the purpose of making such motions the committees on Ways and Means, Appropriations, Rules, etc., have precedence over other committees or individual members.

Committee
of the Whole
House

The Committee of the Whole House on the State of the Union and the Committee of the Whole House, which are treated as quite distinct, are simply the House itself,—except that the Speaker names a member to preside in his stead. The procedure in committee is less formal than in the House and the yeas and nays cannot be demanded. When the Committee of the Whole has finished its consideration of the bill, it rises and the chairman reports the bill to the House, with such amendments as it has adopted. If there have been amendments, the Speaker must then put the motion upon their adoption by the House.

Engross-
ment, third
reading, and
passage

Unlike the procedure in most state legislatures, the three readings of a bill do not have to take place on three separate days. After second reading, and the adoption of amendments if any, the Speaker at once puts the motion, "Shall the bill be engrossed and read a third time?" Debate and motions to amend are then in order. If the vote which follows is in the affirmative, the bill is read a third time by title only.¹ The question of passage is put by the Speaker immediately after the third reading.

¹ It is in order, however, for any member to demand the reading in full of the engrossed bill, in which case the bill must be laid aside until it has been engrossed.

Debate rarely takes place at this point, because in moving the previous question on third reading it is usually moved "through to passage." There is nothing in the Constitution or the rules of the House to require more votes than a mere majority of a quorum (a quorum is a majority of the members) to pass a bill.

The House has three methods of voting: (1) By "sound of voices." This is usually the method first employed, but either of the other methods may be demanded either before or after it has been used. (2) By tellers. This method requires the demand of one fifth of a quorum. The members pass between tellers appointed by the Speaker — those in the affirmative first — and are counted. (3) By yeas and nays. The Constitution provides that one fifth of the members present may demand the yeas and nays. It takes a long time to call the roll of the House, and demands for roll calls are frequently used by the minority as a means of obstruction.

**Methods of
voting**

No member of the House of Representatives may speak for more than one hour without special leave, which is, however, rather frequently granted in the case of important measures. No member may speak more than once upon a subject, except that the member reporting the bill from the committee may open and close the discussion. The ordinary method of bringing debate to a close is the familiar one of the "previous question." When a motion for the previous question is made before any debate has taken place, forty minutes is allowed for debate before the vote is taken. The time is divided equally between the friends and opponents of the measure. It is not uncommon for the member calling up the bill on behalf of the committee to announce that at the end of his hour he will move the previous question. After speaking for a few minutes he will yield the floor to members of his own

**The limita-
tion of
debate**

side and the opposition alternately until the time is exhausted. The previous question cannot be moved in the Committee of the Whole. Any limit upon debate there is settled in the House before it resolves itself into committee. When general debate in Committee of the Whole has been ordered closed, subsequent debate in the committee may take place under the "five-minute rule." This provides that a member moving an amendment may speak for five minutes, and one other person five minutes in reply. It is under this rule that the best debating in the House of Representatives is done. In the House itself the previous question is used quite rigidly to limit debate, except on the more important questions. With regard to these the time when a vote is to be taken is usually settled in advance by motion of the Rules Committee or by agreement. The physical difficulties in the way of debate in the House have already been commented on. Generally speaking, it has little effect on the measures under consideration. Most speeches are frankly intended for political purposes and for circulation in the Record.

**Senate
amend-
ments**

After passage the bill goes to the Senate, in which body it passes through practically the same stages as in the House. If the Senate rejects a bill, of course that ends its career. If the Senate passes the bill without amendment, it is returned to the House and enrolled on parchment for signature by the President. If the Senate amends a bill, it returns it to the House with its amendments. If the House disagrees with the Senate's amendments, it may either ask for a conference or simply send a notice of its disagreement to the Senate. In the latter instance, the Senate either reconsiders its amendments or asks for a conference. If a conference is requested, each house appoints an equal number of "managers," who arrive

Sixty-second Congress of the United States of America;

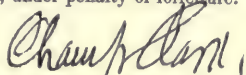
At the Third Session,

Begun and held at the City of Washington on Monday, the second day of December,
one thousand nine hundred and twelve.

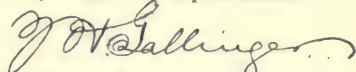
AN ACT

To provide American register for the steam yacht Diana.


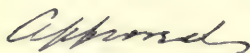
Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Commissioner of Navigation be, and he is hereby, authorized and directed to cause the steam yacht Diana, wrecked and repaired in the United States, and owned by C. Ledyard Blair, a citizen of the United States, residing at Peapack, New Jersey, to be registered as a vessel of the United States: *Provided, That said vessel shall not at any time hereafter engage in the coasting trade, under penalty of forfeiture.*



Speaker of the House of Representatives.



President of the Senate pro tempore.



March 4th 1913.

An Act of Congress after it has received the approval of the President.

at some sort of a compromise, and embody this in a report which is acted on by each house directly. After the final form of the bill has been settled in this way, it is enrolled on parchment and examined by the Committee on Enrolled Bills. It is then signed by the Speaker and by the President of the Senate, and transmitted to the President for his approval.

If the President approves the bill, he signs it, and it becomes a law. If he does not approve it, he may return it with his objections to the house in which it originated. If this house votes for the passage of the measure, notwithstanding the President's objections, by a two-thirds majority of those voting, the bill is sent to the other house, and if passed there by a similar majority it becomes a law. If the President neither signs nor returns the measure within ten days, it likewise becomes a law. Measures, however, which reach the President during the last ten days of the session become law only if signed by him. That is, the President has a "pocket veto." A bill which in any of the ways above described has become a law, is deposited in the office of the Secretary of State.

President's
veto

SUGGESTIONS FOR FURTHER STUDY

BRYCE, chs. xiii to xvii, contains a brilliant and critical account of our national legislature. BEARD, pp. 267-293, will also be very useful. On the recent changes in the rules see REED, pp. 69-93. The rules of the House of Representatives and Senate are contained in the Manuals of the respective houses. They may be obtained in the same way as other United States documents. They are indispensable for serious study of this subject.

Of the many books on the procedure of Congress the best is McCALL, S. W., *The Business of Congress*. REINSCH, P. S., *American Legislatures and Legislative Methods*, is a book of great value on the whole field of legislatures. FOLLETT, M. P., *The Speaker of the House of Representatives*, discusses fully the origin and development of the

Speakership. FULLER, H. B., *The Speakers of the House*, gives interesting information concerning the successive Speakers. WILSON, WOODROW, *Congressional Government*, gives a very pointed and profitable criticism of our Congress.

Topics:

The careers of the more important Speakers, as Clay, Winthrop, Blaine, Carlisle, Reed, and Cannon, will be found fruitful subjects for reports.

The Congressional Record may be used to find illustrations of the principles brought out in the text.

The class may be resolved into a miniature House of Representatives (with the teacher preferably as Speaker). Bills may be drafted and put through in accordance with the rules. Students become intensely interested in such an exercise and do voluntarily a great deal of work because it seems like play.

CHAPTER XXIII

THE UNITED STATES COURTS

WE have already, in the chapter on our federal system, glanced at the judicial power of the United States. It is now time to consider the jurisdiction of the United States courts more in detail.

**Jurisdiction
of the
United
States
courts**

In the first place, cases may be brought to them involving certain parties, including :

(1) The United States.

(2) Ambassadors, other public ministers, or consuls.

(3) States (under the Eleventh Amendment to the Constitution a state cannot without its consent be sued by a citizen of another state or of any foreign state).

(4) Citizens of different states (by a legal fiction a corporation chartered under the laws of a state is for this purpose regarded as a citizen of that state).

In the second place, certain kinds of legal questions give rise to cases that can be brought in the United States courts. These are :

(1) All cases in law or equity arising under the Constitution, laws, and treaties of the United States (including criminal cases).

(2) All admiralty and maritime cases.

In most of the above instances, a case may be brought in either the state or United States courts in the discretion of a plaintiff. The defendant may secure the removal of a case begun in a state court to the lower United States courts for trial, on the ground that he is a citizen of a different state from that of the plaintiff. Most cases, however, in which the United States Constitution, laws,

or treaties are relied on by either party, once begun in the state courts, cannot be taken into the United States courts unless the highest state court decides against the applicability of the superior national Constitution, law, or treaty. In this event, an appeal lies from the highest state court to the Supreme Court of the United States.

Relation of
the federal
judiciary
and the
states

The Constitution, laws, and treaties of the United States are, in the language of the Constitution, the "supreme law of the land," and every judicial officer, state and national, is bound by his oath of office to apply this supreme law, anything in the constitution or laws of the state to the contrary notwithstanding. This provision, together with the right of appeal just referred to, gives to the Supreme Court of the United States the last word in every conflict between state and federal law.¹

The law of
the United
States
courts

In civil cases, the law of the United States courts is the law of the state in which the cause of action arises. In cases not covered by specific state statutes, the federal courts apply what they consider to be the common law of the state. This, on doubtful points, not infrequently differs from the interpretation of the common law given by the state courts themselves. In actions at law, the

¹ The orders of courts, however, do not enforce themselves, and if a state is disposed to back up its own law in spite of the action of the Supreme Court, the decision of the latter may be ineffectual. The United States marshal may, like a sheriff, organize a *posse comitatus*. The President is authorized to use the army of the United States or the militia in putting down opposition to the courts. Either of these methods may be effectively used against bodies of rioters or insurrectionists. To use them against the organized forces of a state would mean war. Many years ago Georgia hanged two men, Grady and Van Tassel, although their appeals were pending in the Supreme Court. Since the Civil War, every decision of the United States Supreme Court by which a state law has been held unconstitutional, has been peaceably accepted by the state in question. There can be little doubt that the states have become confirmed in this habit of acquiescence. Our feeling of nationality, it is to be hoped, is now so strong that we may never see a decision of the Supreme Court nullified by state authority.

rules of procedure are as near as may be those of the state courts. The procedure of the federal courts in equity and admiralty cases is governed by rules made by the Supreme Court and supplemented by regulations of the inferior courts.¹ The criminal law of the United States is wholly statutory, except as respects crimes committed in places ceded to the United States for forts, post offices, etc. In the District of Columbia, the territories of Alaska and Hawaii, and our insular possessions, judicial power is exercised by virtue of act of Congress. In the Philippines and Porto Rico, the "substantive law" remains Spanish while the "remedial law" or "procedure" has been recast by American hands.

The Constitution of the United States vests the judicial power in a Supreme Court and in such inferior courts as Congress may establish. The Constitution further provides that all judges shall hold office for life, removable only by impeachment, and shall be given a compensation which cannot be decreased during their term of office. Otherwise, Congress has a free hand in organizing the Supreme Court and in creating other courts. Except in the case of the Supreme Court, it can even legislate a judge out of office by abolishing the office. This was done by the Republicans in 1802 in the case of sixteen circuit judgeships created by the Federalists in 1801. Under the Constitution, there can be no compulsory retirement of judges on account of age or infirmity. Congress, however, has provided that a judge who has served not less than ten years and reached the age of seventy may retire on full pay.

**The United
States
judges**

At present the judicial establishment of the United States stands as follows :

**The several
courts**

- (1) Supreme Court, consisting of a chief justice and

¹ Equity is still kept distinct from law in the federal courts.

eight associate justices, each assigned to a circuit. The salary of the chief justice is \$14,500, and of the associate justices \$14,000, per year.

(2) Circuit courts of appeals, consisting of any three of the following :

- (a) The justice of the Supreme Court assigned to the circuit. (Rarely acts.)
- (b) Circuit judges, of whom there are at least two in each circuit. Their salary is \$7000.
- (c) Any district judge within the circuit. The district judge from whose decision the appeal is taken is of course ineligible.

(3) District courts, of which there is at least one in each state (in New York there are four), consisting of one or two district judges. Their salary is \$6000 per year. To each of these courts is attached a United States district attorney, a marshal, who corresponds to the sheriff in state courts, and other officers. In addition, each district court appoints a number of commissioners, who issue warrants and conduct the preliminary examinations of persons accused of crime, holding them for trial, admitting them to bail, or discharging them.

**Jurisdiction
of the sev-
eral courts**

The district court is the trial court for all cases originating in the United States courts, except a very few cases which may be begun in the Supreme Court. Appeals lie from the district court to the circuit court of appeals, except in cases involving the question of jurisdiction in criminal cases where death is the penalty, in prize cases, in equity proceedings by the United States under the Interstate Commerce Law, and in cases requiring the interpretation of the Constitution or a treaty. In these cases the appeal must be taken directly to the Supreme Court. The decision of the circuit court of appeals with regard to the cases brought before it is generally final.



The Supreme Court of the United States as constituted in 1911. On the right of Chief Justice White are Associate Justices Harlan, Holmes, Lurton, and Van Devanter; on his left are Associate Justices McKenna, Day, Hughes, and Lamar. (Photograph from a painting by William Bengough.)



The Supreme Court may, if it considers the question of sufficient importance, order the record laid before it for review. The circuit court of appeals may request the instructions of the Supreme Court on any point before rendering a decision. The Supreme Court has original jurisdiction in cases affecting ambassadors, other public ministers and consuls, or in which a state is a party.¹ There have been few cases brought before it under this rule. Otherwise it is purely an appellate court.

The average of legal ability of the circuit and district judges is above that of the state courts. The life tenure, the fair salary, — as judicial salaries go, — and the prospect of a pension in old age make the position an attractive one. The President selects these judges, usually on the recommendation of the Attorney-general, who of course consults the senators from the state concerned. The first consideration in the appointments too often is political advantage, but fitness is sincerely sought for. Bad judicial appointments bring more discredit on the appointing power than any other executive mistake. The justices of the Supreme Court are also almost without exception appointed from the political party of the President. Great care, however, is taken to select men of high merit. The Supreme Court of the United States has always enjoyed the respect of the people for its learning and purity of motive. Its decisions have several times precipitated fierce political struggles, and on these occasions the court has been criticized with great severity. Witness Lincoln's comments on the Dred Scott decision and those of the Democratic platform of 1896 on the Income Tax decision. Such situations are inevitable

**Personnel
of the
United
States
courts**

¹ Such cases, when they arise, are usually tried in the district court, it having been held that the original jurisdiction of the Supreme Court is not exclusive.

because the constitutional questions which the court must pass upon are themselves the subject of violent political controversy. It is a matter of congratulation to the American people that in the hottest attacks upon the court's decisions its honesty has never been impugned.

The Supreme Court
and the Constitution

We have already noted the source from which the United States courts derived their power to hold state statutes unconstitutional. It is doubtful if the framers of the Constitution intended to give them a similar power with regard to statutes of Congress. They evolved this power, however, from the general nature of a written constitution, just as did the state courts. The first assertion of this power was in the case of *Marbury vs. Madison*,¹ decided in 1803. It has been exercised somewhat over a score of times since, — far less often than one would imagine from the volume of writing on the subject.² Several of these judicial vetoes have, however, been of great importance. Furthermore, our interest in this power is aroused quite as much by the cases where the court has declined to use it.

The meaning to be given to doubtful clauses of the Constitution is determined by the general social and political views of the judge, rather than by any process of legal reasoning. These questions are not covered by a legal education no matter how profound. Federalist John Marshall in over thirty years of service as chief justice decided case after case in favor of the wide exercise of the powers of Congress. A Jeffersonian judge would have done quite otherwise. The *Dred Scott* decision was political in the sense that Chief Justice Taney decided it in accordance with a view of the Constitution held by the Southern Democrats but repudiated by the

¹ 1 Cranch 137.

² The fear of its exercise has doubtless operated as a check upon Congress.

Republicans. Of late years, decisions of the court have been affected by the social and economic rather than the political opinions of its members. Judges of conservative temper have deemed unconstitutional social reform measures which others more radical in their social and economic philosophy have thought sound.¹

Every government, in the course of its operation through thousands of agents, inevitably inflicts a good many wrongs on private citizens. For that great class of wrongs against the citizen's right to be free from bodily harm, including restraint of his liberty, known by the lawyers as "torts," our government has never given any remedy except against the officer who committed the wrong. This is rather unsatisfactory, as the officer may not have the money to pay a judgment found against him. When, however, the wrong arises from a breach of contract, actual or implied, the United States gives its citizens the right to sue it in the court of claims. This court consists of a chief justice and four associate justices, and sits at Washington. If a claim, however, does not

The court
of claims

¹ "In the case of *Lochner vs. New York* (198 U. S. 45) the majority of the court decided that a New York statute prohibiting the employment of men in bakeries more than ten hours per day was not a proper health regulation and deprived employers and employees of their liberty of contract. In delivering the opinion of the court, Justice Peckham said, 'Statutes of the nature of that under review, limiting the hours in which grown and intelligent men may labor to earn their living, are mere meddlesome interferences with the rights of the individual.' Contrast this expression of narrow individualism with the broader social policy of Justice Holmes, dissenting, who said: 'I think the word "liberty" in the Fourteenth Amendment is perverted when it is held to prevent the natural outcome of a dominant opinion, unless it can be said that a rational and fair man necessarily would admit that the statute proposed would infringe fundamental principles as they have been understood by the traditions of our people and our law. It does not need research to show that no such sweeping condemnation can be passed upon the statute before us.' In each case the judge was giving expression to his social rather than his legal opinion. In almost every constitutional question the decision rests on social and political grounds. Whether the judges will or no, the policy of the law is the real *ratio decidendi*."—T. H. Reed, *Government for the People*, p. 171.

exceed \$10,000, it may be prosecuted in the district court. Congress makes a lump sum appropriation to pay any judgments against the United States. The court of claims acts not only as a court, but also, on the request of a committee of Congress or head of a department, investigates and reports upon the acts involved in any claim against the government with which Congress or the department in question may have to deal.

SUGGESTIONS FOR FURTHER STUDY

. An excellent discussion of the subject of this chapter will be found in BEARD, pp. 294-314, and in BRYCE, chs. xxii to xxiv. REED, pp. 161-178, gives more fully the writer's views on the relation of the courts to the Constitution. See also TAFT, W. H., *Present-day Problems*, pp. 290-355, and WILSON, WOODROW, *Constitutional Government in the United States*, pp. 142-172.

For teachers, BALDWIN, S. E., *The American Judiciary*, is the best general book. On the relation of the courts to the Constitution see "Suggestions" for Chapter IV, and the following: HAINES, C. G., *The American Doctrine of Judicial Supremacy*; BEARD, C. A., *The Supreme Court and the Constitution*; MOORE, B. F., *The Supreme Court and Unconstitutional Legislation*. CARSON, H. L., *The Supreme Court of the United States*, is very long and rather uncritical, and MYERS, GUSTAVUS, *History of the Supreme Court of the United States*, is very radical and inaccurate.

Topics:

A visit to the nearest United States district court, if such a visit is possible, may be made the basis of reports on the procedure of United States courts as compared with state courts.

A debate on the subject, "*Resolved*, That the courts should not be permitted to hold acts of Congress unconstitutional," will bring out the points of the controversy raging about the federal courts.

CHAPTER XXIV

THE EXECUTIVE DEPARTMENTS

Organiza- tion of federal ad- ministration

IN striking contrast to the confusion which prevails in the organization of state administration are the simplicity and centralization which characterize that of the federal government. With a few exceptions each of the multifarious activities of the United States is assigned to one of the ten departments presided over by a member of the President's Cabinet.¹ The internal organization of the department is so arranged that each Secretary may, through a series of responsible subordinates, control everything which falls within its jurisdiction. Each department is divided into numerous "bureaus" and into less dignified "offices" and "divisions." Their chiefs report either directly to the Secretary or to one of his assistant secretaries. The only important agencies of the government outside this general scheme of administration are the Interstate Commerce Commission, the Civil Service Commission, the Public Printer, the Librarian of Congress, and the Regents of the Smithsonian Institution.

¹ In general, each department deals with a group of similar activities, but there are some very strange anomalies in the distribution of functions. For example, the Public Health Service is a bureau of the Treasury Department, while the Pure Food and Drugs Act is administered by the Bureau of Chemistry of the Department of Agriculture. These peculiarities are the result of historical causes. A very significant example of the evil which may result from the improper distribution of functions may be found in the celebrated Ballinger-Pinchot episode during the administration of President Taft. The Secretary of the Interior, Mr. Ballinger, had jurisdiction over public lands and their withdrawal from entry, while the work of forest preservation was in the hands of the Forest Service in the Department of Agriculture. Mr. Ballinger's opening of certain lands for entry occasioned a very bitter and unseemly quarrel between him and Mr. Pinchot, chief of the Forest Service.

**Department
of State**

The first department in order of creation and official dignity is the Department of State. The Secretary of State is regarded as chief member of the Cabinet, and the position has been filled by many of our ablest public men, among them Thomas Jefferson, James Madison, John Quincy Adams, Henry Clay, Daniel Webster, John C. Calhoun, William H. Seward, John Hay, and Elihu Root. The Secretary of State of the United States has numerous duties like those of the secretaries of the several states, such as affixing the Great Seal of the United States and attesting the signature of the President on all orders, commissions, and proclamations. In his department are deposited the bills which have become law either by the signature of the President or otherwise. He is the medium of official communication between the national government and the states. It is in this capacity that he receives the ratifications of a constitutional amendment and, when sufficient have been received, proclaims its adoption. His most important duty, however, is the conduct of the foreign relations of the country. He is assisted by ambassadors, ministers, and other diplomatic agents stationed at every principal capital of the world. He also has under his direction the consuls who watch over our commercial interests at every important port and commercial center. The salary of the Secretary of State is \$12,000 a year. Next to the Secretary ranks the counselor, with a salary of \$7500, who becomes the acting Secretary of State in the absence of the Secretary. There are also three assistant secretaries of state. The second assistant secretary is by custom a permanent officer and has charge of the diplomatic correspondence, the drafting of treaties, etc. The duties assigned to the first and third assistant secretaries vary greatly under different administrations. For the purpose of facilitating the transaction of business, the State Department is



Handwritten text in the top right corner, partially illegible.

Vertical handwritten text on the left side of the page.

*United States of America,
Department of State.*

To all to whom these presents shall come Greeting:

*I the undersigned Secretary of State of the United States of America
hereby request all whom it may concern to permit*

Description.

*Admiral [illegible]
a citizen of the United States
[illegible] safely
and freely to pass, motion, and to give
leave all lawful, and undisturbed Protection*

Handwritten text in the middle left column, including "I hereby request".



*Given under my hand and the
Seal of the Department of State
at the City of Washington,
the [illegible] day of [illegible]
in the year [illegible] and of the
Independence of the United States
the one and twentieth*

Signature of the Secretary of State.

Handwritten signature.

CANCELLED

A passport, the issuance of which falls among the many duties of the State Department.



divided into seven bureaus. In addition to the bureaus, and distinct from them, are various divisions, which have special charge of matters concerning Mexico, Latin-America, Western Europe, the Near East, and the Far East, respectively.

The duties of the Treasury Department are concerned with: (1) The collection of revenue; (2) The custody and legal disbursement of the money so collected; (3) The protection of the stability of our monetary system. The Secretary of the Treasury has very wide discretion within the scope of these functions. It is important to remember that, unlike the other Cabinet officers, who are responsible to the President alone, the Secretary of the Treasury has many duties, fixed by act of Congress, with regard to which he is the final authority and as to which he reports directly to Congress. There are three assistant secretaries, who receive annual salaries of \$4500. Under the first assistant are the Director of the Mint, who superintends the coining of metal money; the Bureau of Engraving and Printing, which prints the various kinds of paper money; the Register of the Treasury, who signs and issues bonds of the United States; the Comptroller of the Currency, who supervises the national banks; the division of Bookkeeping and Warrants, which issues the warrants by virtue of which money is paid out; and the Secret Service. Under the second assistant come the collectors, surveyors, naval officers, etc., who have to do with the collection of the tariff duties at the various ports of entry. Under the third assistant are the miscellaneous bureaus of the department, some of which deserve mention. The Supervising Architect has charge of the erection of all government buildings. The Commissioner of Internal Revenue collects the internal revenue taxes through collectors in each of the districts into which the country is divided. The Life-saving Station Service, with a superintendent at

**Treasury
Department**

its head, is likewise included in this same division of the Treasury Department. The Public Health Service, the chief officer of which is known as the Surgeon-general, was originally intended for the protection of mariners. It has since very much outgrown these narrow limits, but it is still a branch of the Treasury Department. The Treasurer of the United States has actual custody of the moneys of the government and pays them out on proper warrants.

**War
Department**

The Secretary of War is always a civilian and has a much less detailed control of the work of his department than either the Secretary of State or the Secretary of the Treasury. The actual direction of the army of the United States, including the supply of food, clothing, and munitions of war, is in the hands of the General Staff. The Chief of Staff is semi-independent of the Secretary and communicates directly with the President. The War Department not only undertakes the management of the army, but performs a variety of civilian duties. All navigable waterways are under its control, and no bridge or obstruction may be built in or over them without its consent. The work of river and harbor improvement for which Congress appropriates so much money is carried on by the engineer corps of the army. The government of the Philippine Islands and Porto Rico is under the supervision of the Secretary of War, and a Bureau of Insular Affairs attends to the details of this task. The Panama Canal Zone is under the authority of the Secretary of War, and after some experiments the actual work of constructing the canal also was assigned to the War Department. There is but one assistant secretary of war. He has, however, very clearly defined duties, which include the relations of the personnel of the army to the department (*i.e.* enlistment, discharge, clemency, honors, army posts, the National Guard, etc.) and questions affecting navigable water.

The office of Attorney-general was created by the first Congress. The Attorney-general was to be the legal adviser of the President and of the executive departments. His salary was fixed at \$1200, which even at that day was absurdly small, and he was not expected to give his whole time to the duties of the position. The volume of business rapidly increased, and a number of assistants became necessary. It was not until 1870, however, that he became head of a department, the Department of Justice. The duties of this department may be divided into three groups: (1) Representation of the United States in the courts; (2) Furnishing legal advice to the President and the executive departments; (3) The appointment and supervision of district attorneys, marshals, etc., and in general the maintenance of everything essential to the judicial establishment of the United States, except those duties which belong to the judges.

Next below the Attorney-general in the personnel of the department comes the Solicitor-general (salary \$7500), whose principal duty is the preparation of cases for the Supreme Court and arguing them there. The assistant to the Attorney-general (salary \$7000) is charged with the enforcement of the so-called Sherman Anti-Trust Law. There are also several assistant attorney-generals, to each of whom is assigned a designated branch of the legal work of the government. There are also special legal advisers for several of the departments, who are all regarded as officers of the Department of Justice. Supervision over district attorneys, marshals, and clerks is maintained by the Division of Accounts and a corps of examiners. The federal penitentiaries at Leavenworth, McNeil Island, and Atlanta are under the jurisdiction of a superintendent of prisons and prisoners, appointed by the Attorney-general.

**Post-office
Department**

The post office is really not a branch of the government, but a great business enterprise carried on incidentally to the ordinary purposes of the government. Its receipts nearly, if not quite, pay the expenses of the service. They are kept in the treasury of the United States, together with such appropriations as Congress makes to meet deficits, in a separate fund which is directly at the disposition of the Postmaster-general. This officer was provided for by the first Congress, but did not become a member of the Cabinet until the administration of Andrew Jackson. He is assisted in the management of the department by four assistant postmaster-generals. Many criticisms have been made of the administration of the post office, and it has often been alleged that it could be conducted more cheaply by private enterprise. It is probable that no private enterprise could conduct at a profit such a service as the rural free delivery. The cheap carriage of periodicals, which has been one of the chief financial burdens of the department, serves an important social purpose in the distribution of information and culture. The vast amount of government mail must also be taken into account in estimating the financial success of the post office. On the whole, we get better and more extensive service than any private corporation would give us at the present postage rates.¹

**Navy
Department**

The United States Navy is under the direction of the Secretary of the Navy, who is always a civilian. He has under him an assistant secretary, who, besides acting for the Secretary in the latter's absence, has the duty of

¹ A few years ago startling charges of graft were made against the department, and the investigations which followed resulted in putting the purchase of supplies into the hands of a purchasing agent, directly under the eye of the Postmaster-general, and in making the inspectors the peculiar representatives of the head of the department.

passing on repairs to be made to ships and of conducting the affairs of the Naval Militia. The Navy Department is organized into a number of independent bureaus, the heads of which are responsible to the Secretary. The names of these bureaus sufficiently indicate the nature of their functions: Construction and Repair, Navigation, Medicine and Surgery, Supplies and Accounts, Yards and Docks, Ordnance, and Steam Engineering. The chief of the Bureau of Navigation, selected by the Secretary of the Navy from the higher officers of the navy, is in effect his Chief of Staff. A General Board has been created by departmental regulations, which advises the Secretary with regard to the technical side of his office. To this extent it corresponds to the General Staff of the army, but as its powers are simply to advise, the Secretary of the Navy has a much greater personal control over the administration of the navy than the Secretary of War has over the army.

The office of the Secretary of the Interior was not created until 1849, when the volume of business involved in the disposition of the public lands and in Indian affairs led to the creation of the department. The matters which now fall within the scope of this department are many and various. Indeed, it may be regarded as a sort of catch-all for the functions of the government which cannot properly be included anywhere else. On account of this multiplicity of functions, the Secretary is more of a court of appeal from the decisions of his subordinates than an administrative chief. The sale and giving away of the public lands under the "Homestead" laws is under the direction of the commissioner of the General Land Office. The Geological Survey, the officer in charge of which is known as the Director, was created for the purpose of ascertaining the character of the public lands and

**Department
of Interior**

of reserving the mineral lands from sale or homesteading (see Chapter XXXIII). Its functions have, however, been greatly extended. One of its early tasks was the measurement of streams and the determination of other scientific questions relating to water supply. This work has grown into the vast Reclamation Service, which is now constructing great works for the irrigation of the arid lands of the Western states. The Commissioner of Indian Affairs is in charge of the Indian reservations and schools, the allotment of lands to those entitled to them, and other matters relating to the Indians. The Commissioner of Patents administers the laws with regard to the protection of inventions and trademarks. The Commissioner of Education directs the little that the United States government does in the way of education.

**Department
of Agriculture**

Although the United States had previously done something to encourage better agricultural methods, it was not until 1862 that a Department of Agriculture was created and placed under a commissioner. In 1889 it became a full-fledged department and its Secretary took a seat in the Cabinet. Its work, once confined to the introduction of improved vegetables and fruits, has now grown to enormous proportions and embraces many subjects only indirectly connected with agriculture. For example, the Bureau of Animal Industry, which originally took up merely questions of the breeding and feeding of animals, is now charged with the prevention of the spread of communicable diseases among animals, the inspection of slaughter-houses, packing-houses and their products, the protection of livestock from suffering while being transported by railroad, etc. The Bureau of Chemistry has grown from a bureau for the chemical work of the department to be the administrative agent of the United States for the enforcement of the Pure Food and Drugs

Act. The Forest Service has now not only the duty of improving methods of forestation, but also the duty of administering the forest reservations set apart by the United States. The work of the Weather Bureau is well known and very important. The other bureaus of the department are: Bureau of Entomology, Bureau of Biological Survey, Bureau of Statistics, Office of Experiment Stations, Bureau of Soils, and Bureau of Plant Industry. There are also an Office of Good Roads and a Division of Publications.

By a law approved February 14, 1903, a new department of the government was created, to be known as the Department of Commerce and Labor. To this department were assigned a number of bureaus hitherto under the jurisdiction of the older departments and a few previously unclassified branches of the service. The act of March 4, 1913, changed its name to the Department of Commerce and created a Department of Labor. The Bureau of the Census, as its name implies, is charged with the duty of making the decennial census of the United States. This has long since ceased to be a mere enumeration of the people. Statistics relative to agriculture, manufactures, defectives, delinquents, cities, public indebtedness, public expenditures, taxation, and many other subjects are gathered. The activities of the Bureau of the Census are now not only varied but constant. It collects annually, among other things, the statistics of births and deaths in certain states and cities, and of the finances of cities of thirty thousand population or more. The Bureau of Fisheries studies and publishes the facts relating to the protection and propagation of food fishes, although the laws for the actual carrying out of any policy of fish and game protection must be made by the states. It also investigates the subject of fishery methods. It has

Department
of Com-
merce

engaged on a large scale in the business of fish culture and has stocked our waters with countless fish. The Alaska fisheries, including seal fisheries, and the protection of fur-bearing animals in that territory, are under its absolute authority. The Bureau of Foreign and Domestic Commerce collects and publishes all sorts of information concerning commerce which may be of value to merchants and manufacturers. Its publications are very voluminous, including the annual Statistical Abstract, which contains condensed statements of commerce, manufactures, finance, etc. It issues daily consular and trade reports, which keep American business men informed of foreign trade opportunities. The Bureau of Standards is engaged in maintaining the standard of weights and measures, which now include not only measures of weight, distance, and the volume of liquids, but also measures of heat, light, power, etc. The Bureau of Navigation registers, enrolls, and licenses all vessels, from ocean liners to motor boats. It measures vessels for the assessment of the federal tonnage tax, etc. It is charged also with the enforcement of certain acts; for example, those governing wireless telegraphy and for the protection of passengers. The Steamboat Inspection Service exists for the purpose of enforcing the laws as to hulls, machinery, bulkheads, boats, fire apparatus, etc., of all steam vessels navigating the waters of the United States. It establishes pilot rules and licenses the officers of steam vessels. The work of the Bureau of Lighthouses is evident from its title. The Coast and Geodetic Survey surveys and charts the coasts of the United States, including the insular possessions. It also determines the exact elevation of certain standard points throughout the country. In connection with the Bureau of Lighthouses, it publishes weekly information for mariners.

This latest department of the federal executive is simply an offshoot of the former Department of Commerce and Labor. It is divided into four bureaus: Immigration, Naturalization, Labor Statistics, and the Children's Bureau. The first of these enforces the laws with regard to immigration (see Chapter XXXVIII). The Bureau of Naturalization handles all proceedings for the naturalization of aliens, except the final examination before a judge and such appeals as may follow his decision. The Bureau of Labor Statistics, as its name implies, collects and classifies all manner of statistics relative to the labor problem. The Children's Bureau was created for the purpose of studying the welfare of children.

**Department
of Labor**

The Interstate Commerce Commission, the Tariff Commission, and the Civil Service Commission are fully discussed later (see Chapters XXXV and XXV). The Public Printer is appointed by the President by and with the advice and consent of the Senate. He has general direction over the great Government Printing Office, the largest of the sort in the United States. The Joint Committee on Printing, however, consisting of three members of the Senate and three of the House of Representatives, has large advisory powers. It controls the standard of paper to be used and supervises the making of contracts for paper and other supplies by the Printer. A limited number of every document printed by the United States is given to each member of Congress. The rest are set aside for sale under the direction of a Superintendent of Documents appointed by the Public Printer. They are sold at the cost of the paper and of the printing from electrotype plates.

**Unattached
services**

The Smithsonian Institution originated in the bequest to the United States by James Smithson of an estate of some \$541,000, for the purpose of diffusing knowledge among men. To insure the carrying out of the terms of

**The Smith-
sonian In-
stitution**

the will a corporation was created, which now consists of the President, the Vice-President, the Chief Justice, and members of the Cabinet. The actual administration of the Institution is in the hands of a Board of Regents, made up of the Vice-President, the Chief Justice, three senators, three representatives, and six other persons appointed by joint resolution of the two houses. The Regents elect a distinguished scientist as secretary, who carries on the scientific work of the Institution. The income from the original gift has been supplemented by other gifts and liberal annual appropriations. Very valuable work in ethnology, zoölogy, ornithology, geology, and other branches of science has been done. The collections of the Institution have come to be of vast size and incalculable importance in their several fields. The Institution also carries on the exchange of documents of scientific value with foreign learned societies and governments. A somewhat spectacular but not very important part of the work of the Institution is the zoölogical park which it maintains at Washington.

**The Library
of Congress**

The Library of Congress, which was at first intended simply as a collection of books for the use of Congress, has developed into a great national library. Two copies of every copyrighted work have, since 1846, been deposited in the Congressional Library. It has large appropriations for the purchase of foreign books and periodicals, and it has benefited largely by gifts. It is the largest and most complete library in the United States, and is housed in the largest and most beautiful library building in the world. Not only does this library supply the needs of the country for a vast and comprehensive collection of books, but it sets the standard of library administration for the whole country. The classification of its materials which was made by the best experts in this line of work has been



The White House from the front.



The Congressional Library.



One of the buildings of the Smithsonian Institution.



adopted by the leading libraries of the country. The Library of Congress sells to other libraries copies of the printed cards which make up its catalogue, thus insuring the proper classification of each book by the smaller libraries and relieving them of the trouble of making their own cards. The librarian, who is appointed by the President by and with the advice and consent of the Senate, has complete charge of the administration of the library.

SUGGESTIONS FOR FURTHER STUDY

None of the general works on American government except HARRISON, BENJAMIN, *This Country of Ours*, chs. xi-xix, which was published in 1897, give more than a glance at this subject. See BEARD, pp. 215-222, and *Readings*, pp. 197-205. The book which gives the most information is GAUS, H. C., *The American Government*. Much more readable, however, is HASKIN, F. J., *The American Government*. The Department of Commerce and other departments have published valuable accounts of their activities. A study of each with charts of its internal organization will be found in *Cyclopedia of American Government* (Appleton).

Teachers may use FAIRLIE, J. A., *National Administration of the United States*, although it is now a good deal out of date. See also LEARNED, H. B., *The President's Cabinet*. There is an elaborate work by HUNT, GAILLARD, *The Department of State*.

Every possible use should be made of the reports of the departments where available. They may be secured at very small cost from the Superintendent of Documents. The *American Year Book* will keep you in touch with changes as they may be made.

Topics:

Any department or bureau will make a suitable subject for a report by a student.

CHAPTER XXV

THE CIVIL SERVICE OF THE UNITED STATES

The civil service

THE civil service of the United States includes all government employees except those belonging to the army and the navy, and those whose services are directly required by the legislative and judicial departments. On June 30, 1912, there were 395,460 persons belonging to the civil service. During the first three decades of the existence of our present government, the tenure of members of the civil service was regarded as dependent on nothing but good behavior. Men were appointed to office in part because they belonged to the same party as the appointing authority, but once in office they remained as long as their services were satisfactory. In 1820 Congress adopted an act limiting the term of all employees of the United States to four years. The fact that an officer's term automatically expired at the end of four years, and that to keep him in office it was necessary to reappoint him, made it very easy for the appointing officer to give the position to a political friend.

The spoils system

Following its general application under Andrew Jackson, the "spoils system" began to exercise a truly baneful influence on our federal government. We have already seen something of its effect upon the organization of political parties (see Chapter VII). From the administrative standpoint it was not less detrimental. Offices were filled with incompetent and untrained men, appointed because of their political services. Men appointed in this manner continued to regard their political services as their first duty. Another effect of the system was to

bring upon the President, and to a less extent upon the heads of the various executive departments, an enormous pressure of office seekers. President Lincoln in the most trying times of the Civil War found that his attention was distracted from the gravest matters in order to settle the question of who should receive a minor postmaster-ship.

It was not, however, until the assassination of President Garfield by a disappointed office seeker that definite action was taken to correct the evil. By the act of January 16, 1883, the President was authorized to appoint three persons, "not more than two of whom shall be adherents of the same party," as Civil Service Commissioners. The duty of these commissioners was to assist the President in preparing and carrying out rules to be made by him for the purpose of putting this act into effect. These rules were to provide for filling positions in the "classified service" by open, competitive examinations. The act provided for the classification of certain positions in the Treasury and Post-office departments, and left the power of ordering the classification of other positions to the President. The number of positions, appointment to which was to be made by examination, was approximately 13,000 in 1883, and it had increased to somewhat over 100,000 in 1902. President Roosevelt was particularly active in extending the civil service to new positions, and at the close of his term of office the number of classified positions was nearly 200,000. The last great addition was by executive order of President Taft, on October 15, 1912, when 36,236 fourth-class postmasters were included in the classified service. On June 30, 1912, the total number of positions subject to competitive examinations was 236,061. Practically the only important class of officers left outside of the classified service were those of high rank,

Civil service
reform

appointed by the President with the advice and consent of the Senate. Their inclusion will require additional legislation.¹

Examina- tions

The act of 1883 provided that the examinations should be practical in their character and, as far as possible, relate to the duties of the position to be filled. The examination papers are prepared and corrected in the Washington office of the commission. The examinations are carried on by local boards of examiners, of which there are more than 2000, made up of federal officials detailed for the purpose. In order to have effective supervision over the conduct of these examinations and to carry on the details of the work of the commission, the country is divided into twelve districts, in charge of each of which is a district secretary. In the case of those positions for which an educational examination is not necessary, the whole matter is attended to in the district. In addition to the usual examinations which open the way to positions of a lower grade, examinations are also given for positions requiring unusual training; for example, chief mechanical engineer in the Bureau of Mines, chief of drainage investigations in the Department of Agriculture, etc. These examinations consist largely of information concerning the training and experience of the candidate. They are also tested with regard to their attainment in their particular field by expert examiners outside the government service.

Whenever a vacancy occurs in the civil service, the commission is required to certify to the appointing officer, who is usually the head of the department, the names of

¹ In 1913 three very distinct backward steps were taken by Congress. The law of that year for the administration of the income tax left the employees necessary for its enforcement to be appointed without competitive examination. Another act exempted deputy collectors of internal revenue and deputy United States marshals from competitive examinations, and a third statute provided for the appointment of the employees of the Federal Reserve Board without regard to the act of 1883.

the three persons who stand highest on the list of those who have passed the examinations. From these he makes the appointment. In case he can show valid objection to all three of them, another three may be certified. Of course, it sometimes happens that there are not three persons on the eligible list to be certified, and in certain cases the principle of a competitive examination has to be abandoned in order to find a person to fill the position. In this case a simple pass examination is all that is required. A complication is introduced into the system by the fact that the law requires that appointments in the Washington departments must be apportioned among the several states in accordance with their population. This has been done as nearly as may be, but many of the distant states frequently fail to furnish eligibles enough to fill up their quotas.

**Appoint-
ments**

Persons within the classified service hold office during good behavior. They may be removed only "for such cause as will promote the efficiency of the service." The reasons must be stated in writing, and the person whose removal is sought must have notice and an opportunity to defend himself. The discretion, however, of the appointing officer in making removals is absolute and there is no appeal from his decision. This is a valuable factor in preserving the discipline of the service.

**Tenure of
office**

Very strict provisions are made by law and by executive order against a member of the civil service soliciting or making a campaign contribution. It is a crime for any officer of the United States to discharge, promote, degrade, or threaten to do any of these things to a member of the civil service for failure to make a campaign contribution. Rule 1, of the Civil Service Rules, promulgated by the President, provides "that no person in the Executive Civil Service shall use his official authority or influence

**Non-parti-
sanship**

for the purpose of interfering with an election or affecting the results thereof. Persons who by the provisions of these rules are now in the competitive classified service, while retaining the right to vote as they please and to express privately their opinion on all political subjects, shall take no active part in the management of any political campaign."

Effect of the competitive-examination system

The institution of the system of competitive examinations as the only means of securing appointment to a large majority of positions in the service of the United States has accomplished great good. It has removed an onerous burden from the shoulders of the President and the heads of the departments and left them greater liberty to attend to more important matters. It has raised the tone of politics and greatly increased the efficiency of the various departments.¹

Criticism of the system

Various criticisms have been directed at our system of competitive examinations. The most common is that the passage of the competitive examination does not prove the capacity of the individual to perform important duties.

¹ The report of the United States Civil Service Commission for the year ending June 30, 1912, gives the following table with regard to the effect of the merit system upon the Internal Revenue Service:

	FISCAL YEAR ENDED JUNE 30, 1912	FISCAL YEAR ENDED JUNE 30, 1896
Total collections	\$321,615,894	\$146,830,615
Total expenses	\$5,509,983	\$4,086,292
Cost of collection per \$100.....	\$1.71	\$2.78
Number of deputy collectors employed....	1,257	962
Number of clerks employed	129	185
Number of messengers employed	14	27
Salaries paid deputy collectors, clerks, and messengers	\$1,818,239	\$1,504,186
Number of gaugers, storekeepers, and store-gaugers.....	2,172	2,551
Number of gallons gauged	544,020,347	269,334,762

This must be acknowledged to be a fact. It is true, however, that a person who can pass a competitive examination is more likely to be able to perform important duties than one who cannot. To leave appointments to the discretion of the appointing officers would be to go back to the old "spoils system." The most serious criticism of the present situation is that the higher positions, such as first, second, and third class postmasters, collectors, and other chief officers of customs and internal revenue, district attorneys, marshals, and the heads of bureaus in departmental service are not included in the classified service. The fact that these positions are not filled by promotion within the service deters the really ambitious young man from entering the competitive examinations.

Still another defect is the lack of any provision for pensioning those government employees who have grown too old to render efficient service. At present they can only be disposed of by removal, which is a barbarous way of treating a faithful employee, or by reduction in salary and grade, which, to quote the Quartermaster-general in his report for 1905, is so disheartening to them as to render nugatory their services after such action. President Taft, in his annual message of 1912, recommended the extension of the classified service to include all higher local positions now filled by the President with the advice and consent of the Senate, and the establishment of a system of civil pensions.¹

**Need of civil
pensions**

¹ The Civil Service Commission in the report above referred to declares: "As long as so large a proportion of the higher administrative positions remain unclassified, to be filled from the outside, without promotion, the classified service will not offer a career in competition with such outside fields of employment as are organized and conducted upon a merit basis, and which have systems of retirement upon disability or superannuation. In this respect the civil service remains inferior to the service of many business establishments which assure prompt promotion for merit to the high-salaried positions and which give retiring allowances, and the government

SUGGESTIONS FOR FURTHER STUDY

The reports of the United States Civil Service Commission will be found the best source of up-to-date information available. The publications of the National Civil Service Reform League contain much matter of importance. Obtain if possible examinations used in filling positions of various sorts, and the civil service law of your state or city.

BEARD, pp. 222-230, will be found very useful; *Readings*, pp. 206-213. BRYCE, ch. lxv, gives a brilliant account of the spoils system. HART, A. B., *Actual Government*, pp. 276-294, will be found valuable, as will REINSCH, P. S., *Readings in American Federal Government*, ch. xii, and FINLEY AND SANDERSON, *American Executive and Executive Methods*, pp. 246-266. On the subject of the higher positions see REED, pp. 194-214.

For teachers: see LOWELL, A. L., *Government of England*, vol. i, pp. 145-194, for English civil service system. GOODNOW, F. J., *Comparative Administrative Law*, vol. ii, pp. 29-61, gives American, English, and German systems. FISH, C. R., *Civil Service and the Patronage*; FOLTZ, E. B., *The Federal Civil Service*. For comparison with English system see LOWELL, A. L., *Colonial Civil Service*, and MOSES, R., *The Civil Service of Great Britain*.

Topics:

- English vs. American Methods of Civil Service Examination.
- Examination for Post Office Clerk and Similar Positions.
- Consular Examinations.
- Civil Service Pensions.
- Growth of the Classified Service.
- Political Activity in the Classified Service.
- Backward Steps in 1913.
- Civil Service Pensions.
- Extension of Civil Service Examinations to Higher Positions.

cannot hope to secure and retain the services of an equally intelligent and ambitious class of persons while these conditions exist. The fact that higher positions are not open to promotion deters many of the better class of men from entering the examinations for appointment."

CHAPTER XXVI

TERRITORIES AND DEPENDENCIES

ARTICLE IV, Section 3, of the Constitution of the United States gives Congress the "power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States." It did not, however, expressly grant any power to acquire territory. As a result, Jefferson, who as we know was a strict constructionist, felt that he was violating the letter of the Constitution in making the great Louisiana Purchase, and urged Congress to submit an amendment covering the matter. This Congress neglected to do, but it has since come to be generally believed that the United States, like every other country, has inherent in its very national existence the right to acquire territory by conquest, purchase, or otherwise.

Power of the United States to acquire and govern territories

The only serious question which has arisen has been as to whether the power of Congress to govern territories is limited by the provisions of the Constitution protecting private rights. In the famous Dred Scott Case, Chief Justice Taney declared that it was. He deduced from this the conclusion that Congress could not forbid slaveholders to take their slave property into any of the territories. As late as 1897 the Supreme Court held (*Springville vs. Thomas*, 166 U.S. 707) that Congress could not do away with the requirement of a unanimous verdict in the jury trial guaranteed by the Seventh Amendment.

Does the Constitution follow the flag? Early view

With the acquisition of Hawaii, Porto Rico, and the Philippines, the court was obliged to modify its opinion. These possessions were already fully peopled by persons

**Does the
Constitution
follow the
flag? Pres-
ent view**

of other races and traditions. It was clearly impossible to apply to them jury trials and the other judicial formalities guaranteed by the Bill of Rights. The Supreme Court, therefore, in the celebrated *Insular Cases*, stretched the letter of the Constitution rather violently by drawing a distinction between those rights which are "fundamental," such as the right to freedom of worship, and those which are merely "formal," such as the right to a jury trial. It declared that the "fundamental" rights were the only portions of the Constitution which automatically extend to acquired territory. Otherwise the power of Congress to legislate for any territory coming into the United States' possession is absolute. The remainder of the Constitution and the general statute law of the United States go into force in the territory only by Act of Congress. Where territory is acquired by conquest, the President governs it as the commander in chief of the army until Congress chooses to legislate concerning it.

**The conti-
nental ter-
ritories**

The vast territory on the mainland of North America, all of which has now been made into states of the Union, came into the possession of the United States practically uninhabited. Its location adjacent to the already populated portions of the country insured its filling up with people from the older states. It was always governed, therefore, with an eye to its creation into states. The people of the older territories,¹ except tribal Indians, were regarded from the first as citizens of the United States, and they were given, as soon as possessed of sufficient population to warrant it, self-governing institutions as similar as might be to those of the states themselves.

The type of territorial government upon which all the rest have been modeled was established by the celebrated

¹ Including Hawaii and Alaska.

Northwest Ordinance of 1787. This provided that the territory should be governed for the time being by a governor, a secretary, and three judges, appointed at first by Congress and afterwards by the President of the United States. As each succeeding territory was erected, this same form of government was at first provided for it. The Northwest Ordinance further provided that as soon as there were 5000 male inhabitants of full age in the territory, a representative form of government was to be established. The governor was still to be appointed by the President, but the lower house of the legislature was to be elected by the people of the territory and the upper house was to be chosen from a list submitted by the lower. In each of the other continental territories a representative legislature was established as soon as possible, and except for the fact that the governor and judges continued to be appointed by the President, the government of a territory was made as much like that of a state as might be. It is to be observed that the government of a territory was organized on the same principle as were the governments of the thirteen colonies before the Revolution, *i.e.* a popularly representative legislature and executive appointed by the "mother country." The conflicts of the colonial period were escaped simply because the President usually selected as governor an inhabitant of the territory agreeable to the leaders of his party in that territory.

Of the two remaining territories, Hawaii and Alaska, **Hawaii** the more highly developed government is possessed by Hawaii. The legislature is composed of two houses, known as the "senate" and the "house of representatives." The senate consists of fifteen members, elected for a term of four years. For this purpose the islands are divided into four districts, each of which elects from two to four

senators according to population. The house of representatives has thirty members, elected every two years from six districts returning from four to six representatives. The most significant feature of the government of the territory is the provision with regard to the elective franchise. In order to vote, one must be a male citizen of the United States, twenty-one years of age, have resided in the territory one year and in the district three months, be registered, and be able to read or write either the English or the Hawaiian language. This last provision was intended to eliminate the Chinese and Japanese, of whom there are large numbers in the islands.

Alaska

Alaska has had a representative legislature only since 1912. One of its first acts was to extend the suffrage to women. The power of the governor and the legislature is more limited than in Hawaii or the older territories, because of the considerable number of the functions of government which are administered directly from Washington. The War Department, for example, has power to erect telegraph lines and so controls this means of communication. The schools for natives are directly administered by the Bureau of Education. This bureau has been charged with the task of introducing and managing herds of reindeer for the benefit of the Alaskans. All together, Congress has so far failed adequately to provide for the government of Alaska.

Porto Rico

The island of Porto Rico was acquired from Spain as a result of the war of 1898.¹ The problem of applying American ideas of government to such a thickly settled community, with four hundred years of Spanish traditions behind it, was, of course, a matter of great difficulty. The Porto Ricans were not admitted to American citizen-

¹ It is an island claiming an area of 3600 square miles and had in 1910 a population of 1,118,000, of which sixty-five and one half per cent was white.

ship, although they owe allegiance to the United States. An act adopted in April, 1900, provided for a governor to be appointed by the President, by and with the advice and consent of the Senate, for the term of four years. It also created six other officers, similarly appointed: secretary, attorney-general, treasurer, auditor, commissioner of the interior, and commissioner of education. Each of these officers is at the head of the department of government indicated by his title. With five other persons appointed by the President and the Senate, they constitute the upper house of the Porto Rican legislature, which is known as the executive council. At least five members of the council must be native inhabitants of the island. Up to the present time the practice has been followed of filling the six important executive positions with Americans, and naming Porto Ricans for the five other places. The house of delegates, as the lower house of the legislature is called, consists of thirty-five persons, who are elected by districts every two years. The act of 1900 gave to the Porto Rican legislature the power of determining the franchise. This was finally so arranged, in 1904, that all male persons twenty-one years of age or over, who have resided in the island one year and in the municipal district six months, should have the right to vote. It was further provided that no person could acquire the right to vote after July 1, 1906, unless he could read or write either English or Spanish. There had been some conflict between the native lower house and the executive council, which reached a critical stage in 1908, when the house of delegates endeavored to block the passing of the budget. To avoid further difficulty of this kind, Congress passed a law providing that if in any year the budget is not adopted, the budget arrangement of the preceding year will hold good.

**The
Philippine
problem**

The Philippine Islands, likewise acquired from Spain as a result of the war of 1898, have a gross area of 115,000 square miles, and in accordance with an enumeration made by the War Department in 1903, a population of 7,635,000, of whom 7,539,000 belong to the brown native races of the islands. Of the remaining, 42,000 belong to the yellow race, 24,000 are negritos, 15,000 are of mixed blood, and only 14,000 are white; 461,000 are classified by the War Department as "wild," that is, as belonging to uncivilized tribes. The difficulty of governing the Philippines with their nearly eight millions of people of various oriental races, many of them savages and a large proportion of very primitive civilization, is tremendous. This fact, together with their exceedingly backward state of development under Spanish rule, should be remembered in estimating the work of the United States in the islands. It will not do to become impatient with the present status of the Filipino or cavalierly to say, "A plague on this possession! Let it go."

**Develop-
ment of
American
adminis-
tration**

After the occupation of Manila on August 13, 1898, such parts of the islands as were under the control of the United States were placed under military government. This period of military occupation was somewhat prolonged by the revolt against American rule, led by Aguinaldo and other Filipino "patriots." In the meantime, however, the President had appointed the First Philippine Commission, which recommended steps to be taken for the establishment of a civil government. In March, 1900, the President appointed a second commission, which consisted of William H. Taft as president, and four other members. The instructions to this commission, which were also embodied in the annual message of President McKinley to Congress in December, 1900, laid down the policy of the United States with regard to the govern-



The insular possessions of the United States. Porto Rico and the Hawaiian Islands have here been drawn to the same scale as the Philippine Islands, for purposes of comparison.



ment of dependencies. The commission was told to "bear in mind that the government which you are establishing is designed not for the satisfaction or the expression of our theoretical views, but for the happiness, peace, and prosperity of the people of the Philippine Islands." This commission took up the reins of government on September 1, 1900. It was not, however, until the 4th of July, 1901, that the military governor handed over to Mr. Taft complete executive authority in civil affairs, in accordance with the order of the President designating him as civil governor of the Philippines. By the order of the President, on September 1, 1901, three Filipino members were added to the commission.

The last stage in the development of the commission form of government was the opening on October 16, 1907, of the first representative assembly for the Philippines. At the head of the administration was a governor appointed by the President, by and with the advice and consent of the Senate. There were four great executive departments: interior, commerce and police, finance and justice, and public instruction. The secretary in charge of each of these departments was appointed by the President and Senate. These secretaries, together with the governor, and with four other persons similarly appointed, constituted the Philippine Commission. Besides performing important executive work, this body constituted the upper house of the Philippine legislature. The lower house of the assembly consisted of eighty members elected from that portion of the islands not occupied by wild or non-Christian tribes.

On August 29, 1916, the President approved an act "to provide a more autonomous government" for the islands. It abolished the Philippine Commission. Legislative power was vested in the Philippine legislature of

**Commission
government
in the
Philippines**

**Government
under the
Act of 1916**

two houses, a senate and a house of representatives. The former consists of two elective members from each of eleven senate districts and of two members appointed by the governor-general to represent the non-Christian provinces. The term of senators is six years. The house of representatives consists of eighty-one members elected by districts, and of nine persons, appointed by the governor, from the wilder sections. The suffrage is limited, until the Philippine legislature enacts otherwise, to persons twenty-one years of age who have resided in the islands one year and in the municipality six months, who possess one of the following qualifications:

(a) Were voters at passage of act.

(b) Own real property worth 500 pesos or who pay 30 pesos of taxes.

(c) Able to read and write English, Spanish, or a native language.

The governor-general appointed by the President is the chief executive officer. He is given a veto over the acts of the legislature, which the latter may override by a two-thirds vote. If he still objects he may transmit the measure to the President, whose decision is final. The act further provides for a vice-governor, an auditor, and justices of the supreme court to be appointed by the President, and fixes their salaries. Otherwise the governmental organization of the islands is mostly left to the legislature. The act reads like a state constitution or one of the more liberal colonial charters and contains an elaborate bill of rights. To guard against the friction which seems almost inevitable under this system, — the same sort of discord between governor and legislature which resulted in the independence of the thirteen colonies, — if the legislature fails to adopt appropriations, those of the preceding year are to continue in force. The

judiciary consists of justices of the peace, courts of first instance, and a supreme court. The latter is composed of seven members, both Americans and Filipinos, appointed by the President. In each of the several provinces there is a provincial board of three members, the governor and third member elected by the voters and the treasurer appointed by the governor-general. The municipalities, which are territorial units like the town of New England and include several barrios or villages, are administered by a president, a vice-president, and a council, elected by the people.

American rule in the Philippines has been able to accomplish the complete pacification of most of the area contained in the islands. Important public works, such as the building of roads, etc., have helped to promote the prosperity of the country. Modern methods of hygiene and sanitation have been applied to advantage. Perhaps the most remarkable achievement, however, is that of the bureau of education. At the outset a large number of teachers were imported from the United States, and a very thoroughgoing school system was established, reaching practically every corner of the islands. This diffusion of knowledge has had a pronounced effect in improving the naturally high intellectual capacity of the Filipino.

The acquisition of the Philippine Islands met with earnest protest from a considerable portion of the American people, who believed that the United States had no moral right to secure and hold subject territories which in the nature of things could never become states of the Union. This became more intense with the necessity of putting down the rebellion already referred to. The Democratic party took the matter up, and made it an issue in the campaign of 1900. Its platform for that year suggested that we should announce our purpose "to

**Success of
American
government
in the
Philippines**

give to the Philippines, first, a suitable form of government; second, independence; and third, protection from outside interference." In 1912 the same party advocated granting independence to the Philippines "as soon as a suitable government can be established." Of course few believe that the time has actually come to give the Philippines their independence. There are also but few people who believe that the United States should forever hold them in subjection. Those who know most about the Philippine Islands assert confidently that there is no prospect that the Philippines will be in a position in the immediate future to govern themselves as an independent nation. They almost uniformly deplore the possibility of the work already done being destroyed by premature abandonment of our control. The fate of the small nations in the European War of 1914 has done much to modify the Filipino desire for independence itself. It remains to be seen how the large measure of autonomy granted by the Act of 1916 will work out.

**Other
possessions**

Of the remaining possessions of the United States, the Panama Canal Zone is the most important. Under the act of August 24, 1912, this zone is now governed by a governor appointed for four years by the President and the Senate. The other officers are either appointed directly by the President or are under the authority of the governor and hold office at his pleasure. The island of Guam, secured from Spain in 1898, has never been subjected to congressional legislation. It is governed by the naval officer in charge of the naval station there. Pago Pago, the Tutuila naval station in the Samoan group, is likewise in the hands of a naval officer.

**Part of the
Secretary
of War**

For the purpose of administrative control, the Philippine Commission, the government of Porto Rico, and the government of the Canal Zone are placed in the hands of

the Secretary of War, who is charged with their general supervision. All large matters of policy relating to our dependencies are, of course, determined by the President or by the President with the advice of the Cabinet. Small matters and matters of detail, including correspondence, are handled by the Secretary of War through the Bureau of Insular Affairs.

The District of Columbia was originally a square block of territory containing one hundred square miles, ceded by Maryland and Virginia in 1790. The territory on the Virginia side of the Potomac was retroceded to that state, so that the District now consists of about seventy square miles on the north bank of the river. Various forms of government for the city of Washington and for the District as a whole were tried by Congress, but in 1874, as a result of the extravagance of the local government of the District, Congress took into its own hands all legislative and financial powers. The executive management of the District was vested in a board of three commissioners appointed by the President. Two of these commissioners are civilians, and the third is an army engineer assigned to this particular duty. The various matters of administration are distributed among them in much the same way as in the "commission" form of city government, already discussed. Under this board the government has been economical and efficient. It is probable that with the discovery of decent forms of representative city government, control over the municipal affairs of the District would have been restored to the people were it not for the complicating question of negro suffrage. Washington is a Southern city and contains a very large proportion of negro inhabitants. It would be extremely distasteful to the white population if these negroes were allowed to vote. It is probable, too, that their general ignorance would make their admission to the franchise

**District of
Columbia**

undesirable. On the other hand, in the face of the Fourteenth and Fifteenth Amendments to the Constitution, the United States Congress could not consistently discriminate against them.

SUGGESTIONS FOR FURTHER STUDY

The only comprehensive account of the matters covered in this chapter is to be found in WILLOUGHBY, W. F., *Territories and Dependencies of the United States*, a work which is somewhat out of date. BRYCE, ch. xlvii, and BEARD, pp. 417-427, will be useful. BARROWS, D. P., *A History of the Philippines and A Decade of American Government in the Philippines*, gives a historical narrative of the islands under Spain and under the United States. BEARD, *Readings*, pp. 375-390, contains some very valuable original sources. The Ordinance of 1787 may be found in MACDONALD, W., *Select Documents Illustrative of United States History*, pp. 21-29.

For teachers, the reports of the War Department containing the reports of the various departments of the Philippine and Porto Rican governments and the acts of the Philippine Commission and legislature will be found to contain the bulk of the official material relative to the administration of these possessions. The famous Insular Cases have been collected and published in House Document No. 509, 56th Congress, 2d Session. The most elaborate work on the Philippines is that of WORCESTER, DEAN C., *The Philippines, Past and Present* (1914 edition). See also FARRAND, MAX, *Legislation of Congress for the Government of the Organized Territories of the United States; American Colonial Policy and Administration*, Annals of the American Academy, July, 1907, p. 46; FISHER, H. W., *Principles of Colonial Government*; COOLIDGE, A. C., *The United States as a World Power*; and LATANE, J. H., *America as a World Power*, which treat of our dependencies from different angles.

Topics:

The Continental Territories of the United States.

The climate, population, and resources of Alaska and of each of our insular possessions.

It is suggested that a very profitable class exercise would be a debate on the question, "Resolved, That the United States should at once relinquish her control of the Philippines." Ample current periodical literature is available in addition to the references given herewith.

PART VI

THE FUNCTIONS OF GOVERNMENT



CHAPTER XXVII

FOREIGN RELATIONS AND NATIONAL DEFENSE

THE first function of government, historically speaking, was that of national defense. With the development of civilized states this function has come to be intimately connected with the conduct of those relations which one people sustain toward another. National defense is as much a matter of fair, firm, and tactful dealing with foreign countries as it is of armies and navies. The United States has been peculiarly happy in her foreign relations because of her position on the American continent, far removed from the maelstrom of European politics. Fully occupied with the development of her own matchless resources, she has had little occasion to mingle in the relations of the so-called "world powers." It has been easy for her to avoid the "entangling alliances" against which Washington directed his solemn warning. Secure from attack, she has been able to avoid the diplomatic perplexities and costly armaments which plague the countries of Europe. Nevertheless, the United States has not been able to avoid international complications and has on three occasions been drawn by them into war. The period of our isolation is now practically at an end. The foreign commerce of the United States, for the protection of which the War of 1812 was fought, has by its expansion, especially since the opening of the twentieth century, brought us into closer and closer contact with the nations of the world. The European War of 1914, with its defiance by both parties of the rights of neutral commerce, has only just failed to draw us into its vortex. The Far Eastern possessions which the war with Spain

Develop-
ment of
international
relations of
United
States

cast into our hands have brought us into a whole new field of international relations in the Orient. At the same time the growth in power and ambition of the Empire of Japan has created for us a neighbor on the Pacific whose pride we may wound and whose interests we may thwart.¹ Finally, the peculiar relation which we have assumed toward the other republics in this hemisphere involves us in more and more threatening responsibilities toward them and toward the world.

**The Monroe
Doctrine**

The Monroe Doctrine, the great central fact of our diplomacy, arose out of the proposal of the so-called "Holy Alliance" to assist Spain in reconquering her revolted American colonies. In his message to Congress in December, 1823, President Monroe declared: "With the existing colonies or dependencies of any European power we have not interfered and shall not interfere. But with the governments who have declared their independence and maintained it, and whose independence we have on great consideration and just principles acknowledged, we could not view any interposition for the purpose of oppressing them or controlling in any other manner their destiny by any European power in any other light than a manifestation of an unfriendly disposition toward the United States." The purport of this doctrine has expanded with its frequent reassertions. It is now a well-established principle that the United States will not permit a European power to deprive any one of her Latin-American sisters of territory or of self-government. This does not mean that the United States guarantees them against other forms of punishment. She will, however, certainly look askance on any punitive expedition which would involve even the temporary

¹ Witness the anti-alien land legislation demanded almost unanimously by the people of California.

occupation of territory. Territory once occupied at the cost of bloodshed is hard to surrender. A necessary corollary of the position of the United States is that she must assume responsibility before the world for the conduct of the unruly states of North and South America. She must answer to the great powers for the injuries they or their subjects suffer at the hands of Latin-American governments. She must, under proper circumstances, even intervene to secure the peace and order and protection to life and property which backward, revolution-rent lands are not able to give.

The general conduct of foreign relations is in the hands of the President, who always acts, however, through the Secretary of State. We have discussed the power of the Senate with regard to the ratification of treaties. The President, however, has a perfectly free hand in negotiations of treaties and in the conduct of ordinary foreign relations. The President may consult, and as a matter of fact he frequently does, the chairman of the Foreign Relations Committee and other leading members of the Senate, but this is purely voluntary on his part. The noisy criticism of congressmen or even the action of the two houses cannot alter his course if he is determined to stick to it. Unless, indeed, opposition reaches the point of impeaching him, he can go forward unhindered until he has a treaty to ratify.

**The general
conduct of
foreign
relations**

The United States is represented before every important government by diplomatic representatives of one of the following grades:

**Diplomatic
representa-
tives**

- (1) Ambassador extraordinary and plenipotentiary.
- (2) Envoys extraordinary and ministers plenipotentiary.
- (3) Ministers resident.
- (4) *Chargés d'affaires*.¹

¹ Ambassadors are sent to countries which send representatives of like grade to us. *Chargés d'affaires* are persons temporarily in charge pending the arrival of an ambassador or minister.

The duties of these officers are to cultivate the friendship of the government to which they are accredited and its officials. They care for every species of American interest, from the most important treaty negotiations to securing, for traveling Americans, presentation at court. Diplomatic representatives do not play as important a part as they did before the days of the ocean cable. In important matters they act now mostly on instructions from home. Further, the most important negotiations, such as treaties of peace, are usually the work of special commissioners appointed for the purpose. A diplomatic representative must be recalled at any time when he becomes *persona non grata* to the government to which he is accredited.¹

Appoint-
ments,
salaries, etc.

The diplomatic service in European countries is a definite career to which young men commit themselves, knowing that they may, on the basis of their merit, be ultimately promoted to the highest positions. All diplomatic appointments in this country were formerly the reward for political services. Since 1905 secretaries of legations have been appointed by promotion or on the basis of an examination. This was an important step in the right direction. Our ambassadors and ministers are paid small salaries in proportion to the state they are expected to maintain. In only a very few instances does the United States provide an official residence. The result is that the more important embassies can be assigned only to rich men. This is unfortunate for the quality of the service and distinctly undemocratic in its tendencies.²

¹ Note the case of Dumba, Austrian ambassador to the United States in 1915.

² It is only a few years since President Eliot of Harvard was forced to decline the ambassadorship to Great Britain because he was a poor man. One of our ablest diplomats, David Jayne Hill, was recalled from Germany at the request of that government because he could not live in the manner of other ambassadors.

At every important port in the world the United States is represented by a consul.¹ The consul performs a wide variety of functions connected with the encouragement of American commerce. He certifies invoices of goods to be exported to the United States and assists the customs officers in securing a correct valuation of all goods. He is expected also to make a special study of the industrial and mercantile conditions existing in his district. He has power in disputes between seamen and shipmasters and is charged with the care of destitute American seamen. His duties are minutely prescribed in the three thousand and more paragraphs of the Consular Regulations. Since 1906 admission to the service has been by competitive examinations, and the higher positions have been filled by promotion within the service or by appointing a person who has passed special examinations showing him to be qualified for the work.

**Consular
service**

The great body of rules and principles, sometimes embodied in treaties and judicial decisions, but even more frequently in the practice of nations as expressed in the textbooks of learned authors, is international law. Some of its principles are a bit hazy, and only a few of them have behind them the sanction of force which makes effective our domestic law. Still, it is a good deal more than a mere statement of how nations ought to behave if they would. Even in the utmost bitterness of war its precepts are invoked to mitigate the savagery of the conflict. There is no doubt that the judicial settlement of disputes between nations, or arbitration, will be more and more used in place of force or the threat of force which lies behind most diplomacy. The excessive horrors of

**International
law**

¹ There are also consuls-general-at-large who are traveling inspectors of consulates, and consuls-general who are in charge of the consular work in whole countries.

the European War of 1914 have strongly enforced this truth. We may be proud of the fact that the United States has taken the lead in extending the principle of judicial settlement by her numerous arbitration treaties.

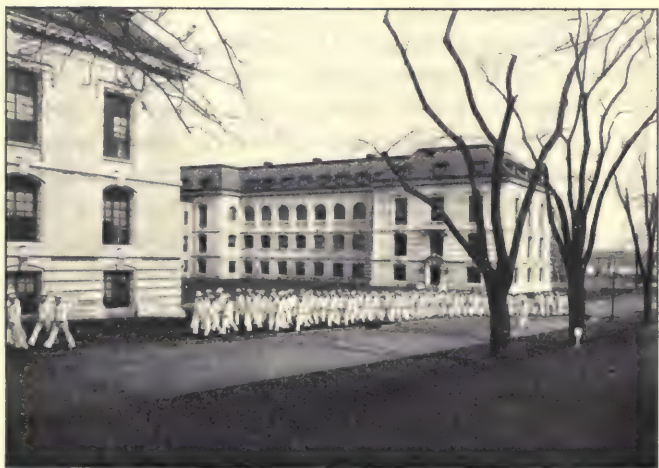
Prepared-
ness

When all means of honorable conciliation fail, our country, like any other, may be obliged to defend its interests and its territory from attack. Throughout our whole national existence prior to the date of this publication we have rested on the protecting breadth of the ocean that rolls between us and our nearest possible foes. We have maintained a small standing army and have in recent years developed a navy which ranked before the war of 1914 third among the navies of the world. For the first time in our history the impression has become general that we are inadequately prepared for defense. We have learned that we are not absolutely immune from possible attack, and while few are alarmists enough to fear the ultimate victory of any antagonist, we all recognize that an aggressive foe might do us hideous damage. Following the outbreak of the European war, Congress made provision for greatly increasing the navy. By offering pay to officers and enlisted men in the National Guard, it endeavored to provide a volunteer force for national defense. The experiences of the guard on the Mexican border in the summer and fall of 1916 seemed to put the finishing touch upon that organization. It appears to many that only the creation of a national force recruited in some compulsory manner will meet the needs of the situation. All that we can do here is to lay down the principle upon which any scheme of "preparedness" is to be criticized: it must be adequate for defense but not so great as to tempt to aggression.¹

¹ Organization of war and navy departments has been outlined in Chapter XXIV.



West Point cadets at dress parade on the drill ground of the military academy.



Midshipmen at the naval academy at Annapolis marching to the dining hall.



For the purpose of training officers for the army and navy, the United States maintains the military academy at West Point and the naval academy at Annapolis. There are two cadets at West Point for each state, congressional district, and the territories of Porto Rico, Alaska, and Hawaii, four from the District of Columbia, and forty from the United States at large. There may also be not to exceed 180 cadets selected by the President from enlisted men in the regular army and from the National Guard.¹ When a vacancy occurs the representative, senator, or delegate from the district, state, or territory in question — or, in the case of the cadetships assigned to the District of Columbia and the United States at large, the President himself — recommends a candidate. This candidate must be between the ages of seventeen and twenty-two and must pass severe physical and mental examinations. Many representatives and senators, to avoid the embarrassment of selecting a candidate from a long list of applicants, conduct a competitive examination of their own, giving the coveted recommendation to the one who receives the highest grade. The superintendent of the academy, who holds the rank of colonel of engineers, is assigned to that duty by the President. Instruction is given by a corps of military and civilian professors. The course is a thorough one, embracing a great deal of mathematics, military science, modern languages, etc. The graduates of the academy enter the army as second lieutenants. When the number of graduates is insufficient, as it always is in time of war, officers are advanced from the rank of non-commissioned officers or are appointed directly from civil life.

Each senator, representative, and delegate in Congress

**Military and
naval
education:
the military
academy**

¹ Act of May 4, 1916. Congress is also considering the establishment of new military and naval academies.

**The naval
academy**

is entitled to three midshipmen in the naval academy. The President names two from the District of Columbia, fifteen each year from the United States at large, and twenty-five each year from the enlisted men of the navy. The same sort of mental and physical tests are applied to each candidate as in the case of the military academy. After four years at the academy and two years at sea, the midshipman receives the rank of ensign. At all of the "land grant" colleges military drill is required of all students in the first and sometimes in the second year. The United States assigns an officer of the regular army as instructor. Naval training schools for non-commissioned officers are maintained at several stations. Both the army and navy now provide summer instruction for high school and college students in special camps and vessels. A naval war college is maintained at Newport and army war colleges at Washington, D.C., and Leavenworth, Kansas, for the special training of certain selected officers.

**Military
justice**

Offenses committed by soldiers or sailors against the elaborate regulations for the government of the army and navy which have been made by Congress, and the numerous rules laid down by the Army and Navy departments, are investigated by courts-martial. These courts do not belong to the federal judiciary, and are not limited by the provisions of the Constitution with regard to trial by jury, etc. Their decisions are reviewed by officers of the judge advocate-general's department, and are subjected to the final approval of the Secretary of War. The ordinary courts have no jurisdiction with regard to them, except when a court-martial exceeds its jurisdiction or inflicts a penalty not warranted by law.

**Martial law
and the
citizen**

The most interesting question with regard to military justice arises when it is extended to private citizens in time of war or great civil disturbances. During the Civil

War, President Lincoln assumed the power of suspending the privilege of the writ of habeas corpus throughout the country, and of giving military courts the right to convict and punish all persons charged with giving aid or comfort to the enemies of the United States. Congress ultimately sanctioned his conduct. In time of great riots or similar disturbances, the governor of a state may declare martial law within the region affected. In such cases military justice is administered by the militia of the state, under the direction of the governor. The preservation of public safety is the highest law, and private rights, even those guaranteed by the Constitution, cannot stand against it.

SUGGESTIONS FOR FURTHER STUDY

BEARD, pp. 315-357, has excellent chapters on foreign affairs and national defense. See also *Readings*, pp. 308-322. HASKINS, F. J., *The American Government*, pp. 40-64, is interesting. HART, A. B., *Actual Government*, pp. 459-480, will prove useful. *The Encyclopedia of American Government* should also be consulted. *The American Year Book* for 1913 describes the present organization of the army in some detail. See also *Report on the Organization of the Land Forces of the United States* (Government Printing Office, 1912). A very useful work is that of UPTON, MAJ.-GEN. E., *The Military Policy of the United States*, Sen. Doc. 494, 62d Congress, Second Session.

Topics :

- Official Residences for Ambassadors.
- American Diplomats and Court Etiquette.
- Extension of the Merit System.
- The Various Plans for "Preparedness."

CHAPTER XXVIII

CRIME AND ITS PREVENTION

**Primitive
punishment;
vengeance**

THE earliest idea of punishment was simply that of personal vengeance. A wrong committed against any individual was avenged by that individual alone, or with the assistance of his family or clan. As time went on and the necessity for peace and good order became better recognized, there was substituted for this system of violent personal vengeance a regular schedule of payments which had to be made by the criminal or his family to the injured party. These payments were known as "wergild." Gradually, increasing emphasis was laid on crime as an offense against the peace of the tribe, or the king, and ultimately the idea of personal vengeance disappeared from punishment. It has been a principle of the English common law for centuries that a private individual cannot excuse or pardon a criminal offense committed against him.

**Moral
responsi-
bility**

The advent of Christianity among our rude European ancestors brought with it the idea of sin and the moral responsibility of the criminal for his act. All through the Middle Ages and down to the very close of the eighteenth century, crime was punished, in part, it is true, to vindicate the majesty of the State, but in large measure as vengeance for the violation of the moral law. The result was a very severe punishment for all offenses. In the seventeenth-century, in England, a man might be hanged for stealing a rather small loaf of bread, and it was not until well into the nineteenth century that the death penalty for the offense of sheep-stealing was removed.

In the latter part of the eighteenth century a strong humanitarian movement arose, which had for its object the modification of the penalties imposed on crime. It advanced the theory that the punishment should be proportionate to the character of the offense. It assumed, for example, that murder was a worse crime than burglary, and burglary than pocket-picking, and established punishments accordingly. Sometimes the punishment was fixed absolutely, but more frequently, as time went on, the judge was given power to fix the amount of the sentence within certain limits. This represents the theory of punishments now prevailing practically all over the United States.

It was not until 1876 that a great Italian, Cesare Lombroso, first brought forcibly to the attention of the world that forty per cent of criminals might be distinguished from other men by certain peculiarities of their anatomy. Lombroso made elaborate and careful studies of great numbers of criminals and thus laid the foundations of the modern science of criminology. Any one who studies its literature will find a number of conflicting theories as to the cause of criminality. It is enough for our purpose if we realize that crime does not arise simply from the bad choice of the individual. Evil traits are inherited from one generation to another. Alcoholism, the use of drugs, immorality, and ill-nourishment tend to create types of men easily tempted into crime. Bad surroundings may corrupt the mind and will. You must not fall into the error of thinking that the ordinary criminal is not at all responsible morally for his conduct. He is. On the other hand, it is true that his disposition to commit crime has in most instances been determined by facts outside of his control.

Natural
causes of
criminality

If men commit crime largely because of causes beyond their control, we are not justified in punishing them on

**Modern
theory of
punishment**

behalf of an angered deity. Punishment may still be necessary, but its only excuse can be the prevention of crime. Furthermore, for the purpose of prevention, it is desirable that we should treat the so-called criminal in such a way as, if possible, to cure those defects of body or character which have made him a criminal. This is of course easiest with young persons and with those just entering on a career of crime. It is also important to restrain permanently the liberty of those criminals who cannot be cured. Such a criminal when released will proceed to commit other crimes, and, what is of even more significance, may bring into the world a family of children predisposed to crime. It is for these reasons that those who know most about this subject advocate the indeterminate sentence, under which the offender may be committed to prison until cured.

Jails

Each county and, with few exceptions, each city and village in the United States has a jail, in which persons arrested for crime are confined pending trial, unless they are released on bail.¹ These jails are also used as places of confinement for those convicted of misdemeanors. Generally speaking, they are very badly kept. More often than not they are filthy. Frequently no proper provision is made for separating the different classes of prisoners. Convicted criminals and those merely accused of crime are often allowed to mingle. These jails, therefore, become schools of crime. In some of them conditions are so bad that guilty persons look forward with pleasure to a sentence which will take them to the state penitentiary.

Persons convicted of more serious crimes are confined in prisons or penitentiaries, as they are sometimes called,

¹ Persons accused of violating the laws of the United States as well as of the state are kept in these local jails pending trial.

maintained by the state. They are usually administered by a superintendent of prisons or a state prison commission. Some states have prisons of modern construction with adequate provision for light, air, and sanitation. Many of our prisons, however, are vile, vermin-infested, and destructive of the health of prisoners. The great New York state prison at Ossining is an example of the old-time prison architecture which defeats, on the physical side at least, all efforts to improve the criminal. In the older prisons two or more convicts are confined in the same cell, with the result that the better of the two is frequently corrupted by the other.

Prisons

Down to the beginning of the nineteenth century, prisons were regarded simply as places of detention, and the inmates rotted in idleness. We now endeavor to teach each prisoner some useful trade and to keep him occupied at it during the period of his imprisonment. Popular prejudice against prison-made articles has greatly limited the occupations which may be carried on in prisons, but of late some progress has been made by permitting the prisoners to manufacture articles for use in public institutions. In many prisons schools are carried on, and various efforts are made to elevate the thoughts of prisoners and to prepare them to face the world when they go out. Convicts used to be dressed in ugly striped suits. This practice is now being abandoned, as destructive of the self-respect of the individual.

Prison labor

On being released from prison, the convict is given a suit of clothes, usually made in the prison, a ticket to the place from which he was convicted, and a small sum of money.¹ Up to a few years ago this was all the attention which the released convict received until he committed his next crime. Private societies began the work of find-

**The convict
after release**

¹ About five dollars.

ing employment for them and looking out for their interests. This task has now been somewhat taken up by prison authorities, but a great deal remains to be done really to insure the criminal a fair chance to be "straight." The average person does not want to have anything to do with an ex-convict. The cold shoulder is turned upon him in every quarter, and he is often forced, in sheer desperation, to go back to his criminal ways. Every individual can help in the reformation of criminals by a kindly and sympathetic attitude toward those who have been so unfortunate as to commit crimes.

**Reforma-
tories**

Until a comparatively short time ago all prisoners, without regard to age, sex, or the character of the crimes they had committed, were confined together in our state penitentiaries. The obvious effect of this treatment was that those who were young and unconfirmed in crime became hardened criminals from association with the rest. The first efforts made to correct this situation were the creation of special places of confinement for young persons. These places were called "reformatories," to distinguish them from prisons, and an effort was made to give them the atmosphere of a trade school rather than a prison. Too often, however, the efforts in this direction have been half-hearted and the officers of the institution act rather as keepers than as teachers. Another step in this direction which has been taken in certain states is the establishment of reformatories for segregating the different kinds of offenders — the feeble-minded, those just starting in crime, and others who differ only in point of age from the hardened criminal of the state prison.

Reformatories are often justly called schools of crime. This has led to an increasing use of the probation system, under which a guilty person, instead of being sentenced

**Juvenile
courts and
probation**

to prison, is permitted to enjoy individual liberty under the supervision of a probation officer. This officer helps him to secure employment or, in the case of juvenile offenders, sees that they are supported under conditions suitable for the bringing up of boys and girls. A person on probation has to report periodically to the probation officer or the judge. In order to handle more reasonably the cases of young persons who come in conflict with the law, juvenile courts have been established, usually as branches of the superior or trial court. The juvenile court room is stripped of the usual fittings of a criminal court. There is no jury, no witness stand, no prosecuting officer. The young offender is brought in and examined by the judge rather as a friendly adviser than as a minister of justice. A judge may commit a child to an institution, either a reformatory or a "home" maintained by private charity, but more frequently he arranges, with the help of the probation officer, for proper care of the child by its parents, or if that is impossible, in some other private family. Children thus placed on probation must report periodically to the probation officer. It is his duty to study the child and his surroundings and to help him to become a useful citizen. Juvenile offenders are not now usually subject to the horrors of a city jail, pending the hearing of their case. Special detention homes are provided for them, with competent matrons and nurses in charge.

The police

The functions of a police force are to preserve order and to discover and arrest those who commit crimes. For fifty years after the adoption of the federal Constitution constables, elected by the inhabitants of each ward, were almost the only police protection afforded in our cities. The first police force, in the sense in which we now understand that word, was instituted in 1828,

when Sir Robert Peel secured the enactment by Parliament of a law creating a police force for the administrative district of London. It was not until nearly the middle of the nineteenth century that police forces on the London model became common in American cities.

Police administration

In our larger cities the head of the police force is usually a civilian or board of civilians. Formerly the board system was practically universal. Police boards, however, generally proved to be inefficient and were frequently corrupt. An effort was made to correct the evil by providing that they must contain representatives of each of the leading political parties. These bipartisan boards, however, were worse than their predecessors. While the board system is still retained in some of our larger cities, the tendency in recent years has been to put the control of the police force in the hands of a single individual. Below the police board or commissioner is always the chief of police. In New York City he is simply an executive assistant of the police commissioner, but in most cities he is in actual charge of the ordinary operations of the department. In small cities there is frequently no civilian head of the department and the chief of police is directly responsible to the mayor, city manager, or city council.¹

Men are appointed to the police force in the larger cities on the basis of competitive mental and physical examinations. In the smaller cities officers are appointed

¹ The larger cities are divided into precincts, in charge of each of which is an officer usually known as "captain." Attached to each precinct station house are one or more officers, usually known as "desk sergeants," whose business it is to keep the station-house "blotter" (a large book in which are entered the names and charges against all persons brought to the station house) and other records. The sergeant may accept bail in the case of misdemeanors and sometimes can issue warrants of arrest. There are also attached to every precinct officers who are sometimes called "roundsmen" and sometimes "sergeants," who have direct charge of the patrolmen.



Judge Ben. B. Lindsey of Denver holding a conference in his famous juvenile court.



Miss Mary Bartelme, of Chicago, who assists the judge of the juvenile court in that city by hearing girls' cases in a separate chamber, questioning a young delinquent brought before her for examination.

at the discretion of the police board or commissioner, except that it is common to establish a minimum physical and age qualification by charter or ordinance. Our policemen are generally of fine physique and excellent courage. Promotions up to the grade of captain are made from the regular force. The chief of police in small cities may be appointed from the outside. The salaries of patrolmen vary from seven to twelve hundred dollars, and the officers are paid in proportion. It is not unusual to pension policemen disqualified for service by injury or old age.

The police
force

It is of course clear that a uniformed policeman can do little more than preserve order on his beat, and arrest persons whom he may catch "red-handed" in crime. The most serious crimes are committed in secret, and the task of finding out who has committed them is one requiring considerable skill. In all large police forces certain men are assigned to this duty. They wear no uniforms and are usually called "plain-clothes men" or "detectives." They seldom perform the marvelous acts of deduction which are so easy to the detectives of fiction, but they do manage to discover and convict a great many of the perpetrators of crime. In this they are aided by very complete police records with regard to criminals. Every person who is arrested in the large cities is weighed, measured, and photographed. These records form what is known as the "rogues' gallery." In addition, their finger prints are taken. It has been discovered that the minute whorls at the ends of our fingers are the most permanent parts of our body. They are impossible to change, and form an absolute means of identification of prisoners. Furthermore, records are kept of every crime committed, and the records of prisoners and of crimes are exchanged by the police of the principal cities. The detectives study the criminal class until they become

The
detection
of crime

familiar with its members. They thus learn whom to suspect when a crime is reported, and where any record, such as a thumb print, is left by the criminal at the scene of his crime, they are able to "run him to earth" quite promptly. Of course, many crimes go undetected and unpunished, especially homicides. Our detective departments, however, are working along scientific lines, and improvements are to be looked for.

Police
"graft"

Sometimes police officers are so lacking in a sense of their real duty as to permit certain criminals to commit crime with impunity. This is especially true with regard to violators of liquor laws and the laws regulating gambling and the social evil. These criminals pay well for police protection and are the principal source of police graft. It is much more rare for the police to graft upon burglars or highwaymen, but even this is sometimes done. In a corrupt police force the patrolman or other officer who collects money frequently passes it on to persons higher up. Generally speaking, the rank and file of the police force is about what those in authority want to make it.

SUGGESTIONS FOR FURTHER STUDY

BEARD, pp. 607-613, deals with the subjects of police administration and the juvenile court. See also the same author's *American City Government*, pp. 158-189. MUNRO, W. B., *The Principles and Methods of Municipal Administration*, ch. vii, gives an excellent account of the organization of police administration. The best book on the juvenile court is FLEXNER AND BALDWIN, *Juvenile Courts and Probation*. For teachers, see MCADOO, WILLIAM, *Guarding a Great City*, and FULD, *Police Administration*.

There is no very easy reading on the subject of criminology. HENDERSON, C. R., *Introduction to the Study of the Dependent, Defective, and Delinquent Classes*, is an excellent elementary book. ELLIS, HAVELOCK, *The Criminal*, is scientific and popular. See also an excellent article by HART, H. A., *A Working Program for the*

Extinction of the Defective Delinquent, in the "Survey," May 24, 1913. See also *Encyclopædia of American Government*. Good use can be made of such books as RIIS, J., *How the Other Half Lives*, *Children of the Tenements*, *The Children of the Poor*; SPARGO, JOHN, *The Bitter Cry of the Children*, etc. The classic work on the subject is LOMBROSO, C., *Crime, Its Causes and Remedies*. Translations of the works of the principal European writers are to be found in the *Modern Criminal Science Series*, published by Little, Brown & Co. See also HENDERSON, C. R., *Correction and Prevention of Crime*.

Of life in modern prisons, the best idea can be obtained from such personal accounts as JENNINGS AND IRWIN, *Beating Back*, and LOWRIE, DONALD, *My Life in Prison*.

Topics :

The prisons, reformatories, juvenile courts, and police departments of your own state and locality furnish numerous excellent subjects for investigation by students. A visit to the criminal identification bureau of your police department will be interesting and profitable.

CHAPTER XXIX

PUBLIC MORALS AND RECREATION

Leisure and vice

THE old saying, "Satan always finds some work for idle hands to do," is a very true one, especially in the case of young people who are bubbling over with energy and the desire for enjoyment. Overstrained workers also naturally seek relaxation. They are apt to pursue pleasure feverishly and to supply by the use of stimulants any lack in the natural zest they have for it. Unfortunately society has only just begun to recognize its responsibilities for providing healthy, normal recreation for the leisure hours of the people. The result is that those seeking enjoyment have been made the prey of greedy and unscrupulous persons, who sell cheap, vicious, and destructive pleasure at high prices and make gain of the natural human instincts by perverting them to their own profit.

The liquor traffic

The most powerful and generally significant of these perverting forces is the liquor traffic. The question as to whether an individual shall use liquor or not is largely personal. The question, however, as to the social effects of its sale is one which concerns the whole community. There can be no question that, as at present conducted, the American saloon is a thoroughly demoralizing institution. It is not within the province of this book to point out the evils of the habit of excessive drinking; these are well-known facts of physiology. There is no doubt that the saloon encourages excessive drinking. Furthermore, it is the door through which the grosser and more destructive vices enter. The saloon is often frequented by gamblers, evil women, thieves, and other criminals. It is also a source of political corruption. The saloon-keeper and his

bartenders have certain hangers-on whose votes they can control, and they become very important as party workers and an important cog in the corrupt political machine (see Chapter VIII).

The United States has done nothing with regard to the liquor traffic except to tax it. The individual states have, however, adopted numerous restrictive measures. The most drastic of these is total prohibition, which is now the policy of twenty-five states.¹

**Prohibition
and local
option**

It is to be noted that the cause of prohibition has made very rapid progress since 1907. All the other states, except Nevada, New Jersey, and Pennsylvania, have some form of local option, by which each locality decides for itself, by popular vote, whether or not it will license the sale of liquor.² The unit is most frequently the county, but in several states it is the town, village, or municipality. Some of these laws provide that if the county goes "dry" the sale of liquor is prohibited throughout the whole county, but that if it votes "wet" the minor divisions within the county may still, if they desire, forbid the sale of liquor.

In Massachusetts the question of license or no license is voted upon each year in every town and city. In most

¹ PROHIBITION STATES

<i>State</i>	<i>Date Adopted</i>	<i>State</i>	<i>Date Adopted</i>
Maine.....	1858	Colorado.....	1914
Kansas.....	1880	Alabama.....	1914
North Dakota.....	1890	Arkansas.....	1914
Georgia.....	1907	South Carolina.....	1915
Oklahoma.....	1907	Iowa.....	1915
Mississippi.....	1908	Michigan.....	1916
Tennessee.....	1909	Nebraska.....	1916
North Carolina.....	1909	Montana.....	1916
West Virginia.....	1912	South Dakota.....	1916
Virginia.....	1914	Idaho.....	1916
Oregon.....	1914	Arizona.....	1916
Washington.....	1914	Indiana.....	1917
Arizona.....	1914		

² In Pennsylvania somewhat the same result as local option is secured, since the elective judges grant liquor licenses. In New York local option does not apply to cities.

states, however, the question is put upon the ballot only when it is requested by a petition signed by a certain proportion of the voters of the locality. In New York the voters have their choice as to whether licenses shall be issued to saloons, hotels, wholesalers, or drug stores. Under these "local option laws" a large and increasing number of localities have forbidden the sale of liquor. The prohibition states and prohibition localities together constitute upwards of two thirds of the area of the United States. The Interstate Commerce clause of the Constitution was for a long time the chief obstacle to really effective prohibition. The Supreme Court decided that no state or locality could prohibit the sale of liquor shipped from other states, so long as it remained in the original package. Congress was finally induced in the early part of 1913 to pass a law, making applicable the laws of the state or locality as soon as a shipment of liquor passed within its boundaries. This act was vetoed by President Taft, but was passed over his veto by the necessary two-thirds majority.

Further restrictions on the sale of liquor

A license is everywhere required for carrying on the sale of intoxicating liquors, the fee varying from a few dollars to \$3000 a year.¹ In general it is fixed at the point which is believed in the locality to be high enough somewhat to restrict the number of saloons. Several states and many cities and counties limit the number of licenses which may be granted to a certain proportion of the population. In Massachusetts, for example, this number is one for every thousand outside of Boston, while in that city the number of saloons is limited to one thousand. Where this policy is not followed, the number of saloons tends to become excessive. It is usually required that the person who receives a license shall be a "person of good moral character," and that he shall have the consent of

¹ The latter is the amount charged for licenses in Birmingham, Alabama.

the neighboring property owners. The sale of liquor to minors, intoxicated persons, and Indians is generally forbidden. Some states forbid the sale to a man or woman when either wife or husband, or parents, have requested that liquor be not sold to them. The presence of women in saloons is forbidden in certain states. Some states require that the windows of all places where liquor is sold shall be of clear glass, so that the place is open to view from the street. Some states forbid booths or partitioned spaces in a place where liquor is sold. In all but a few states the hours of closing and opening are fixed. Laws forbidding the practice of treating have been adopted in a few places with excellent results.

Gambling, even when fairly conducted between individuals, is a dangerous practice. The possibility of getting something for nothing has a powerful appeal to human cupidity. It is easy to become fascinated by games of chance, and many people will lose all they have and more in playing them. Furthermore, the gambling in professional gambling establishments is usually unfair. The loss of money through gambling leads men to commit thefts and other crimes and reduce their families to want. Thus its ultimate social consequences are not limited to the mere stripping a fool of his money. These facts have led to the general prohibition of gaming houses and of all forms of gambling conducted by professionals. While the terms of the laws are broad enough to include betting by any one, on any chance whatever, no method of enforcing them against merely private bettors has been discovered. Many years ago the United States put a practical end to the great lotteries by forbidding the transportation through the United States mails of the advertisements of lotteries or the announcements of the winning numbers. The last form of gambling to be prohibited

Gambling

was racetrack gambling. The conduct of this form of gambling was profitable not only to the bookmakers, or professional gamblers, but to the management of the racetrack itself. Vast sums of money were invested in racetracks, and many persons believed it desirable to encourage them because of the stimulus which they gave to the breeding of fine horses. It came, however, to be generally recognized that it was more important to preserve the breed of men than to improve that of any four-legged animal. Racetrack gambling has now been prohibited in nearly every state in the Union.

Dance halls

Many forms of pleasure in themselves quite innocent have been commercialized, frequently with bad results. Taking advantage of the natural desire of young people to dance, great numbers of commercial dance halls have been established. A few of these are conducted in an exclusive fashion for the benefit of well-to-do people who desire to learn to dance. The vast majority, however, are open to any one who can pay the fee charged. A large number of these establishments conduct classes in dancing, and on one or two nights a week give a ball for the members of the class and such others as desire to come. Another sort of dance hall is open every evening, on the payment of a moderate fee, to all comers. Girls are usually admitted free to these places. In many dance halls of both these classes, liquor is either sold on the premises or near by. There is seldom any chaperonage for the young women, and the whole atmosphere is demoralizing. More sordid still are those dance halls where girls are employed to dance with the patrons, and receive a commission upon the sales of liquor they are able to make. Dance halls have become much more common in the last few years, with the introduction of the new styles of alleged dancing, which can be easily picked up without instruction. In

view of the evils which undoubtedly flow from the commercial dance halls, many good people advocate their entire suppression. The desire to dance is, however, so inherent that it would appear to be better to try to re-direct that desire than to undertake the hopeless task of suppressing it. Recreation during the winter months must be largely indoors, and it is a very encouraging fact that properly conducted dances, with good music and good dancing floors, can compete successfully with cheap commercial dances. Places where dancing may be enjoyed without access to intoxicating liquor and with proper chaperonage should be established by municipal activity if necessary.

Another type of indoor amusement, and one that is even more universally enjoyed than dancing, is that furnished by the theaters and picture shows. The stage at its best is one of the noblest means of literary expression. Probably the most effective means of improving the legitimate stage is by applying our highest ideals to the selection of plays to attend. No public censorship of plays has ever worked satisfactorily. The vaudeville and burlesque theaters have been dealt a crushing blow by the "movies," and are by no means as important a problem as they were some years ago. It is to the picture theaters that the multitude resort. The moving-picture play is rapidly developing from a portrayal of primitive, slapstick comedy and crude melodrama to include every type of drama ever produced on the legitimate stage. It has put within the reach of the common people great dramatic masterpieces and the acting of the world's greatest living actors and actresses. The demand for new films, however, is so insatiable, that thousands of them are turned out with little regard to anything except pleasing the public fancy. They correspond to certain types of

**Theaters
and picture
shows**

cheap literature which they have replaced, and more than replaced. Where one boy read a dime novel, ten boys see the corresponding picture film. A very large proportion of the moving-picture audiences are made up of children, so that the effect of this sort of films upon their immature minds is very important. Several cities and a few states have established a censorship of moving-picture films. Intelligent censorship so directed as to exclude the objectionable while retaining every element of attractiveness would be the solution of this problem, if it could be secured. Clean picture films help to keep out of mischief great numbers of boys and girls and grown people as well.

Amusement parks

The exploiters of the desire for pleasure have also gone into the field of outdoor amusements. Chief among their enterprises is the amusement park, which varies all the way from simple picnic grounds to elaborate if not beautiful money-getting devices, such as Luna Park and Dreamland at Coney Island. They are frequently located in situations of natural beauty, or upon the shores of oceans, lakes, or rivers. They are, therefore, subjected to the objection that their private ownership compels persons to pay for the enjoyment of things which should be free to all. Generally speaking, the majority of these amusement enterprises are very orderly and well conducted and offer no greater possibility of harm to young people than they are under anywhere outside of their own home. There are some amusement parks, however, which are infested with people of evil character and full of danger to the young. Amusement parks, therefore, should be under strict public regulation.

The most important public provision for recreation has been the establishment of parks. The United States government has set aside as national parks certain dis-

tracts of the public domain containing great natural wonders and beauties. The most important of these are the Yellowstone and Yosemite parks. The great national forest reserves may be considered in a certain sense as parks, being open to the use of campers under certain regulations. They are, of course, available only for the enjoyment of a limited number of people who can afford to make the long journey to reach them. Many of the states have also established reservations to protect beautiful or curious scenery, or sites of historical importance, and about one third of the states have also considerable forest reserves. The state of Massachusetts has, through the Metropolitan Park Commission, established in the cities and towns surrounding Boston a most beautiful and comprehensive system of public reservations. With this single exception, however, no state government has done much toward putting parks within the reach of the mass of the people.

**National
and state
parks**

The earliest city parks in this country were nothing more than common cow-pastures. The beautiful and dignified Boston Common is perhaps the best example of a park of such ancestry. It was not until well after the middle of the nineteenth century that cities began to take any particular heed with regard to the development of parks. The first great undertaking in this direction was the acquisition of Central Park by New York in 1853. The plans for its beautification were made by Frederick Law Olmsted, and it has served as the model for parks throughout the country. Most of the parks acquired prior to 1890 were situated at some distance from the centers of population, and so were not available as playgrounds for the great bulk of children. In the last twenty-five years, however, many cities, notably Chicago, New York, and Boston, have acquired numerous small

**Municipal
parks**

tracts of land in the crowded portions of the city and have made them into recreation grounds for the people of the locality. This is the last step in park development. It is to be regretted that greater foresight was not shown in reserving from the outset occasional blocks for this purpose, as our cities have been obliged to pay enormous prices for land for small parks and playgrounds.

Playgrounds

The establishment of playgrounds as a branch of municipal activity is of comparatively recent origin. At the close of 1913 there were 1050 cities where supervised recreation was supported wholly or in part by municipal funds. Only nine of these cities started the work prior to 1900. Boston took the lead in 1887; Chicago followed in 1893; Pittsburgh, Hartford, New Haven, Baltimore, New York, San Francisco, and Albany were the only others which had established playgrounds by 1899. It would be impossible within the space which can be devoted to this subject, to describe in detail the various playground and allied recreational facilities. It is essential to the success of the public playground that the play be supervised. Opportunity to play well-organized games and to use good gymnasium apparatus has drawn the children from the streets and given them a reasonable outlet for their energies. It is much better that the extra activity of the boy should go into a good game of baseball, than into devising mischief. The toughest gangs have been broken up and the petty crimes which children commit have almost entirely disappeared where playgrounds have been opened in the slum districts of large cities. All together, the advantage to the community of such playgrounds is tremendous. Every community, large or small, whether its present need of playgrounds is great or not, should at least acquire sites for them, in anticipation of future development. Every school should



An outdoor gymnasium for men and boys in Chicago's admirable system of parks and playgrounds.



Women and girls in one of the public baths of New York City.

have playgrounds for children, and these should be open after school and during vacation.

It is not enough to establish outdoor playgrounds. Some provision for play during the stormy months must be made, and likewise something must be done for the older members of the community. A great deal has been accomplished in some of the cities, notably Rochester, N.Y., in using the schoolhouses as recreation centers. Instead of locking the schoolhouse after school hours, it is kept open and used as a meeting place for the people of the neighborhood. In its auditorium lectures are given for mothers' clubs, and a great many varieties of classes and clubs are organized. If the school is equipped with a gymnasium, as every school should be, this is utilized.

**Recreation
centers**

Some cities have created recreation centers in connection with their parks and playgrounds. The greatest success along these lines has been achieved by Chicago.¹

Bathing is of importance, of course, from the point of view of health. The motive for the establishment of public baths, however, has been largely recreational, and they are used so much in this spirit that it seems proper to discuss them in this place. There are two great classes. The first comprises out-of-door baths, which may be used only during the summer season. The second may be

**Public
baths**

¹ This city has several small parks, varying from two to sixty acres in extent. They are beautifully laid out, and provisions are made for the wants of all ages and sexes. They offer facilities for football, baseball, tennis, and basketball, and during the cold season for skating, tobogganing, etc. There is an athletic field and gymnasium for men and an outdoor gymnasium for women and girls, as well as a fully equipped playground for the younger children, including a great variety of apparatus and a wading pool. These parks also have bathing pools of considerable size, with ample dressing rooms. The playgrounds are lighted, so that they may be used at night as well as during the day. Branches of the public library are maintained in these places. Light lunches may be secured. There are indoor gymnasiums for men and women, and lockers, shower baths, and a plunge. There are also four or five clubrooms, which are used for a variety of organizations, the creation of which is encouraged by those in charge of the work.

called all-the-year-round baths. Baths of the first class usually are located on the shore of a lake, river, or ocean, dressing rooms being supplied by the city. In some cases artificial baths have been constructed, and floating baths are sometimes used in rivers and harbors. The greatest seaside bathhouses now publicly managed are those maintained by the Massachusetts Metropolitan Park Commission at Revere Beach and Nantasket. They are used by thousands nearly all the year round. In the indoor baths which are located in the most crowded portions of many of our cities there is more of the element of cleanliness and less of recreation than in the outdoor baths, but practically all of them have a large plunge.¹

SUGGESTIONS FOR FURTHER STUDY

There is no good elementary book on the liquor problem, and few of any kind. Most of the literature upon the subject is controversial. The American Issue Publishing Company of Westerville, Ohio, publishes numerous books and papers advocating prohibition, among them the *Anti-Saloon League Year Book*, which gives the best summary of the present status of the saloon question. The position of the liquor trade is best represented by the Year Book of the United States Brewers' Association. Periodical references, which are very numerous, must be largely depended on. Among the dependable books for teachers are: COMMITTEE OF FIFTY, *The Liquor Problem*, and ROUNTREE AND SHERWELL, *The Temperance Problem and Social Reform*.

On municipal recreation, see BEARD, C. A., *American City Government*, for a general sketch of the subject. ADDAMS, JANE, *The Spirit of Youth and the City Streets*, is stimulating and authoritative. See also books by JACOB RIIS cited in last chapter. ROBINSON, C. M.,

¹ It is now the general rule to charge a small fee for the use of the baths. In the baths of the Massachusetts Metropolitan Park Commission, for example, the fee is ten cents if the bather brings his own suit, twenty-five cents if a suit is supplied him. Some of the all-the-year-round baths are free if the bather brings his own soap and towels, otherwise a small fee is charged. On the other hand, if one needs a bath, he is never really turned away because he lacks the required fee.

Modern Civic Art, pp. 287-354, and KOESTER, FRANK, *Modern City Planning and Maintenance*, pp. 139-148, are beautifully illustrated books on city planning which incidentally treat this subject. Reports of the park and playground commissions of the several cities are very helpful. They are generally well illustrated. See especially the reports of the Chicago South Side Park Commission and the Massachusetts Metropolitan Park Commission. "The Playground" is an excellent periodical devoted to this subject and an indispensable work to any one who cares to follow it closely. PERRY, C. A., *Wider Use of the School Plant*, MERO, E. B., *American Playgrounds*, LEE, JOSEPH, *Constructive and Preventive Philanthropy*, and CRAWFORD, AND DAY, *American Park Systems*, will be useful for teachers.

Topics:

Laws and ordinances with regard to saloons in your state and city.

Each of the recreational features, public and private, of your locality can be made the subject of a report. For example, a committee of the class may study picture shows, reporting on the character of the films displayed during a week and recommending some plan of improvement.

CHAPTER XXX

CARE OF DEPENDENTS

Who are dependents?

THERE are in our country, as in every other, a large number of persons unable to earn a living. Defects of mind or body either present from birth or caused by accident or disease are a common cause of this inability. Extreme youth and extreme age are alike helpless. There are many, besides, who in the full enjoyment of mental and bodily health are, by the circumstances of modern industry or by great natural disasters, temporarily made destitute. The first duty of caring for those who cannot care for themselves rests upon their near relations. This high moral obligation is likewise enforced by the laws of our states. When all the help that affection or fear of the law can secure for such unfortunates as have families able to help them has been secured, and when all that is done by benevolent and fraternal organizations for their members has been added, there is still left a multitude of the unhelped. These are "dependents," the subject with which this chapter deals.

Public vs. private relief

There has been a good deal of doubt as to just what should be done for dependents by government and what by private charities. It is generally admitted that the maintenance of institutions for those dependents who can thus be best cared for is a proper function of government. The disputed ground is what is known as "outdoor relief," that is, help which is extended to the destitute in the form of money, supplies, etc. Many people contend that the public officers who are charged with such duties are almost always ignorant and frequently corrupt, and

that public outdoor relief is administered without regard to the causes which, in each case, have made relief necessary. Private charity has, through the associated charities or charity organization societies, secured the careful investigation of each case by a skilled worker. It is thereby possible to give relief in such a form as will help to put the family or individual relieved beyond the need of future help. Records are kept of every case, of the relief given and of its subsequent history.¹ It is entirely possible for government in administering relief to use the methods of the associated charities. In German cities, publicly administered poor relief has the advantage of the gratuitous service of large numbers of interested persons, each of whom personally looks after a few poor families. They do this under the direction of the best experts obtainable. There is no reason why our cities, towns, and counties should not relieve the poor scientifically, and there is no avoiding the fact that it is the duty of the whole community to relieve the distress within it.

The general principle underlying public poor relief in the United States is that each locality should care for its own poor. The unit of poor relief is the town in New England and the county in most of the rest of the country, although a few states use the township unit. Poor persons are either maintained in almshouses or assisted by outdoor relief. Vermont has a system of town almshouses, and a few larger cities maintain city almshouses. In general, however, the almshouse is a county institution.² Generally speaking, they are administered by the county

Local poor
relief

¹ Criticism is sometimes made that the methods of organized charity are heartlessly methodical and are the antithesis of genuine charity. Such critics lose sight of the fact that the important thing is, not the relief of individuals, but the cure of social disease.

² These almshouses are variously known as almshouse, poorhouse, poor farm, county infirmary, and county hospital, the latter two being efforts to remove the stigma attached to the term "almshouse."

board. Very little is done for the inmates except to clothe and feed them rather badly. Those who are sufficiently able-bodied are expected to work on the farm or about the buildings. Feeble-minded persons, and in most states many insane persons as well, are kept in these institutions. This does not lend much cheer to the lot of the other inmates. Where the county is the unit, outdoor relief is administered by the county board, and where the town or township is the unit, by the overseers of the poor. In incorporated cities the relieving authority is determined by the city charter.

**Medical
relief**

Medical assistance, including the services of a physician and a supply of medicine, is very generally furnished to persons in distress. Free dispensaries are supported by public and private charitable agencies, at which poor persons may have their minor ills attended to. Private hospitals usually make room for a certain number of poor patients, and free clinics are maintained by medical schools and hospitals. All our large cities and some counties maintain hospitals which are free to the poor. Some of the states provide sanatoriums for the treatment of tuberculosis. The United States Public Health Service maintains more than twenty hospitals for seafaring men, and a tuberculosis sanatorium at Fort Stanton, New Mexico. The War and Navy departments provide hospitals at the various army posts and naval stations, and maintain general hospitals and sanatoriums for those engaged in their respective services.

**State insti-
tutions**

In many states, state institutions for the care of the insane and feeble-minded have been established. In New York, Minnesota, and California all pauper insane persons are regarded as a state charge and are confined in state asylums. In Wisconsin and Pennsylvania a good system of county insane asylums is maintained. The care of the



An outdoor class of tuberculous children on the roof of a city school building.



How patients in a city hospital are cared for on outdoor sleeping porches.

insane, however, in county asylums and almshouses is generally so bad that the tendency is toward putting it wholly in the hands of the state. Most of the feeble-minded¹ who are not cared for by their relatives are unhappily still to be found in county almshouses. A beginning, however, has been made in several states toward their care in state institutions. At first it was hoped that by improving the methods of education a considerable proportion of feeble-minded children could be made self-supporting. This has, however, not proved to be the case. Because of the scant attention paid to the restraint of the feeble-minded, their number is rapidly multiplying. Farm colonies should be established, in which the adult as well as the youthful feeble-minded could be maintained, under healthy and pleasant conditions, without the opportunity of mingling with general society.

The state has also assumed in a large measure the care of deaf, dumb, and blind children. There are more than fifty institutions for the deaf and dumb and more than forty for the blind. These schools are largely of an industrial character, intended to enable these unfortunates to be self-supporting. Several state institutions for the adult blind have been established in the last few years.

There are three common methods of administering the charitable institutions which are conducted by the state. The most common of these is by means of a board of trustees, usually appointed by the governor, for each separate institution. The trustees most often are residents of the locality in which the institution is situated. They select the superintendent and determine the general

**Administra-
tion of state
institutions**

¹ It is difficult to define just what constitutes feeble-mindedness. It extends all the way from absolute imbecility to mere backwardness and inability to protect oneself in the struggle of life.

policy of the institution within the limits of the appropriation allowed by the legislature. In certain states institutions of an allied character are combined under the management of a single board. In several of the states "boards of control" have been established, which have charge of all state institutions.¹

State supervision over the care of dependents

Many states, through a state board of charities and correction, exercise supervision over local and private charitable institutions. They visit personally or through their officers the various charitable and penal institutions. They study the work of every charitable organization. Their power to compel the correction of abuses varies from state to state. Their chief weapon at all times is the publicity which they can give to bad conduct.

Unemployment

Great disasters, such as fires, floods, droughts, earthquakes, strikes, etc., have always thrown out of employment large numbers of people. This of course is only a temporary cause of poverty, and disappears as soon as normal conditions are restored in the community. It is very proper to give money and supplies freely to the victims of a disaster, to help tide over the period until the wheels of industry are again in motion. We have lately, however, been perplexed by a problem of permanent unemployment. Every winter large numbers of men out of work congregate in our cities. Their numbers are increasing year by year. They are frequently disorderly,

¹ The advantage of the board-of-control system is that it makes it possible to buy supplies for all state institutions on a wholesale basis, and to enforce standard methods of accounting. The advantage of the combined board for allied institutions is that it provides for the separate consideration of the problems of that particular class of institutions. The only advantage of the separate-board plan is that the members of the board are able to watch more closely the conduct of the institutions. This is not always an unmixed benefit. The tendency is in favor of greater and greater centralization. The ideal system would probably be an expert state superintendent of charities and corrections and a centralized purchasing system (see Chapter XLI).

and they lend a ready ear to the words of revolutionary agitators. For this they are not to be blamed. Hunger breeds desperation in the best of us. Their existence may be accounted for in part by the seasonal character of American industries. In a country like the United States, which is predominantly agricultural, there is much more work to be done in the summer than in the winter. Bad conditions of living, especially in our great cities, have produced a class of people incapable of anything but occasional labor of a very simple kind. The scum of the flood of immigrants swells their number. These people drift into the country in the summer to find employment in the fields and orchards, and in the winter, together with the strictly professional tramp, drift back to the cities. Of even greater importance, however, is the number of honest, capable, industrious persons who are always out of employment. It is probably nearly correct to say that, leaving out of account men out of work because of strikes, on the average at least ten per cent of the working force of the nation is always out of employment.

Giving outdoor relief to the unemployed tides them over the winter season, and with the coming of summer the situation becomes less acute. It does not, however, solve the problem. Indeed, too liberal outdoor relief only encourages the growth of the weak and inefficient element. The seasonal character of industry can only be corrected by economic adjustment of such a nature that winter seasonal industries can be developed. How this is to be done is one of the great problems for public-spirited men and women in years to come. Where the number of unemployed is very large, some form of work on roads or public buildings should be required of all who seek assistance, and the laws against begging and vagrancy should be strictly enforced. For the capable and indus- **Remedies**

trious worker whom the fortunes of industry periodically leave without employment, some form of insurance against unemployment is probably the only means of relief.

SUGGESTIONS FOR FURTHER STUDY

It is somewhat difficult to find references on the subject matter of this chapter suitable for young students. "The Survey" gives a popular treatment of many matters of this kind and is an indispensable periodical for any class studying the social activities of government. HENDERSON, C. R., *Introduction to the Study of the Dependent, Defective, and Delinquent Classes* (1906), is the nearest approach to a good elementary book on the subject. WARNER, A. G., *American Charities* (1908); DEVINE, R. T., *Principles of Relief* (1904), and *Misery and its Causes* (1909), are excellent books. See also DAVENPORT, C. B., *Heredity in Its Relation to Eugenics*; BRACKETT, J. R., *Supervision and Education in Charity*; and SEAGER, H. R., *Social Insurance*. Good use can be made of the annual reports of charity organization societies, etc., and of the Proceedings of the National Conference of Charities and Correction and the several state conferences. The United States Bureau of the Census has made special reports on *Benevolent Institutions* (1904) and on *Insane and Feeble-minded in Hospitals and Institutions* (1904).

Topics:

The best topics for reports may be found in the study of charitable agencies of your locality and state.

CHAPTER XXXI

EDUCATION

EDUCATION is the greatest single function of government in the United States. More than one fifth of our state and local expenditure is devoted to it. The interest in public education began with the first settlement of the New England colonies. One of the first acts of the Massachusetts legislature, for example, was to require every town of fifty families to maintain a common school. The idea that ample public provision must be made for the education of every child thus early rooted in our institutions has spread throughout the present vast extent of our country. During the colonial period the schools were mostly for boys, but after the Revolution girls were generally admitted to the common schools. Secondary schools, exclusively for boys, were established in a few of the large places, the first and in many ways the most significant being the Latin School of Boston, founded in 1635. Outside of the large places, such college preparatory work as was done was carried on by the local ministers. About the time of the Revolution, academies for boys and boarding schools for girls began to be established. These were sometimes supported by endowment, and in other instances were simply commercial ventures. Public high schools, at first for boys alone, but later for both sexes, first appeared in 1820, and grew quite rapidly in the cities. It was not, however, until the establishment of the "union" high school, supported by several school districts jointly, that the private academies and

**Beginnings
of our
educational
system**

boarding schools were gradually supplanted. Private schools for elementary and secondary education are now most numerous in the eastern part of the United States. They are almost exclusively patronized by the well-to-do.

**Land grant
aid to
education**

The United States gave its first assistance to education by granting to each of the new states the sixteenth section of each township for school purposes. After 1848 the grant was increased to the sixteenth and thirty-sixth sections. These grants put the common schools upon a firm financial basis, even in the days of early settlement, and insured the spread of the free public school throughout the territory west of the Alleghanies. The United States also set aside two townships of land (46,080 acres) in each new state, for the support of higher education. Ohio, Florida, Wisconsin, Minnesota, and several of the more recently admitted states received even larger grants. In 1852 Congress granted to each state, in aid of agricultural and mechanical colleges, 30,000 acres for each senator and representative in Congress from that state. The states in which no public land remained received "scrip" entitling them to an equal quantity of land anywhere in the public domain that they might care to locate it. The states made very different dispositions of these really huge grants. Some sold them off as quickly as possible at the minimum price of \$1.25 per acre. Other states retained their land until it reached a very high value. The university lands of Minnesota, which have been kept to the present day, it is estimated will bring about \$40,000,000.

**Administra-
tion of rural
schools**

The unit for the administration of common schools is the school district. In those parts of the United States where the organized town or township exists, the school district usually has the same boundaries. It is, however,

a separate corporation. The governing body of the school district is the school board. In its election women frequently have the right to vote; even when they do not possess the general suffrage. The board usually consists of three members, elected for a term of two or three years. It is the business of the board to provide school buildings, to employ teachers, and to levy taxes for school purposes. In some states the school district is divided into sub-districts, each of which contains a single school. These tiny districts are governed by a director, a trustee, or a small board elected by the people. Experience has proved, however, that the subdivision of the township for school purposes has produced bad results. The "district school" has had a halo of romance placed upon it by poets and story-tellers. The truth is, however, that it was formerly good because there was then nothing better. As compared with the work of the modern graded school, a teacher, struggling with pupils of all ages in one room, is unavoidably inefficient. The modern tendency is to unite school districts and to have a single graded school for the township, and where circumstances require it for several townships. It has been found cheaper to have such schools and pay for the transportation of the children to them than to maintain the district school of our fathers. In the South and in sparsely settled states like Nevada, the principal unit of educational administration is the county. The individual school districts are laid out and their affairs regulated by the county school authorities.

All the states except Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont have a county superintendent of schools. In a few instances he is appointed by the state superintendent of instruction or the state board of education. In the great majority of states,

County superintendent
of schools

however, he is elected by the people of the county for a term of from one to five years. Two years is the term most frequently provided. It is his business to visit the schools of the county, especially the rural schools. He exercises an amount of influence with the local boards of education in the selection of teachers and the methods of education employed, proportioned to his tact and energy. It is his business to see that the compulsory education laws are enforced and that the course of study prescribed by the state is carried out. He has, besides, a great many functions of an administrative character with regard to salaries, statistics, apportionment of state and county funds, etc. He is expected once each year to hold an institute, which all teachers are required to attend, for the purpose of instructing them in the latest educational methods. These institutes are very valuable in keeping up the standard of teaching work and promoting the good spirit of the teaching force. In some states the county superintendent is assisted by a county board of education, whose duty it most frequently is to examine the candidates for certification as teachers. In certain of the Southern states, however, the county board is in direct charge of the schools of the county.

City schools

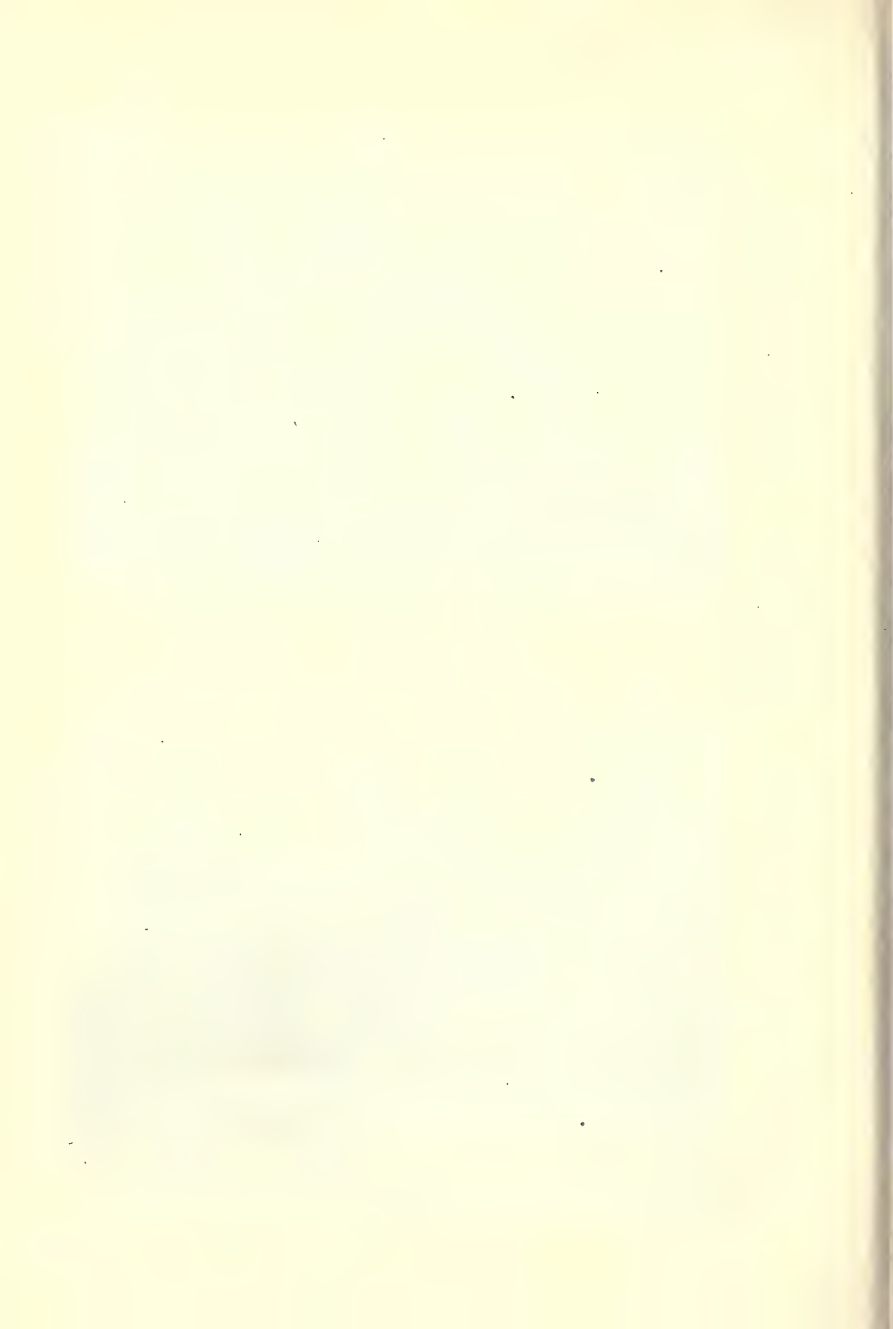
Every incorporated city constitutes a school district, sometimes bits of outlying territory being included with it for this purpose. The organization of the city board of education is usually determined by the city charter, so that there is considerable variety among the cities of the country in this respect. The board of education of the city of New York consists of forty-six members; that of Chicago of twenty-one. The tendency in recent years has been toward a great reduction in size, five being apparently the number most approved. Boston, which had a board of 116 in 1874, reduced the number first to twenty-



A specimen of the old-fashioned district school, now generally displaced by a centrally located graded school which serves all the children of the township.



A great high school in New York City, where the pupils in daily attendance number more than four thousand. A school like this forms the center of higher educational activities in its community.



four and then to five. In most cities the board is elected by the people, but in some is appointed by the mayor, as in San Francisco. School boards are generally unpaid, but there are some exceptions, as in Rochester, N.Y., and San Francisco. The board of education is charged with providing school buildings, maintaining school property, employing a superintendent and teachers, and levying school taxes. Most school boards leave the management of the educational side of the work to the superintendent. There are, however, a good many boards which feel it their duty to take part in the most minute details of school management. The financial portion of their work the school boards generally administer directly, or through a business agent of some kind.

The state administration of education is in the hands of a superintendent or commissioner. He is generally elected by the people, but in a few states, like Massachusetts and New York, he is appointed. The school law of most states is very elaborate and detailed, leaving little discretion to either the state or local authorities. The course of study is usually prescribed by this law. The superintendent is expected to visit the schools and make recommendations as to the methods of teaching in them. But the local authorities may adopt or neglect this advice as they will. The superintendent is also charged with certain clerical duties relating to apportionment of school funds to the several counties. In a large number of states there is also a state board of education. This board consists sometimes of certain state officers *ex officio*. Where this is the case it rarely has much power, being restricted to such matters as the care of school lands and school funds. In other states the board is made up of such *ex officio* members, supplemented by

**State ad-
ministration
of education**

others appointed by the governor, or is wholly appointed by him. The laws of a few states provide for the representation on the board of different branches of the teaching profession. Most of the appointed or semi-appointed boards act merely in an advisory capacity to the superintendent with regard to courses of study, examination of teachers, selection of textbooks, etc. In Massachusetts and New York the board appoints the superintendent and through him exercises a strong central control over the educational system of the state. More centralized authority in wisely appointed state boards of education is very much needed throughout the country. The New York and Massachusetts systems seem to give the best results.

**Support of
education**

Besides the proceeds of land grants and bond issues, our public school system is supported in part by state, county, city, town, or district taxation. In most states at least half of the school revenue is derived from local taxes, and the proportion of revenue rises in some instances to as high as eighty or ninety per cent. Fifteen states raise practically nothing from the state at large for schools. The rest either add a definite number of cents on the dollar to the general property tax, or make a lump sum appropriation. The state school money is apportioned among the several localities, usually on the basis of school population or average attendance. State aid is very desirable, especially in the less settled portions of the country, in order to enable the rural schools to be properly maintained. Normal schools, technical schools, and colleges are maintained by the state in the same way in which it provides its share of the common school fund. Counties apportion among the districts money which they raise for the schools. The cities, towns, and school districts add whatever the local

school board thinks necessary, within the limit prescribed by law.

Among the most interesting of the problems in the field of educational administration are the matters of selecting and supplying textbooks. In over a score of states common school textbooks are adopted for the state at large (exception being sometimes made of certain large cities) by the state board of education or a special textbook commission. About an equal number of states provide for district adoption, and the remainder for county adoption. Adoptions are made for from three to six years, five years being the period in most states. Twelve states furnish free textbooks, at least in the common schools. In the others the pupils must purchase their books.¹

Textbooks

Our compulsory-education laws are largely the counterparts of our child-labor laws. They began with the Massachusetts act of 1852. Forty-two states have now some form of compulsory education, the exceptions all being in the South. These laws usually require attendance from the seventh or eighth year. Two cease to require it at twelve, fifteen at fourteen, nine at fifteen, fifteen at sixteen, and one, Idaho, at eighteen. The period of attendance required varies from twelve weeks in Virginia and Nebraska to a full school year in twenty-eight states. The percentage of persons ten to fourteen years of age who cannot read and write has, as a result of these laws, been greatly reduced, especially in the

**Compulsory
education**

¹ Fear of the publishers' overcharging the public has led to efforts to control the textbook traffic by fixing a maximum price at which they may be sold. Two states, California and Kansas, print their own common school books, usually paying the publishers a royalty for the use of the plates of their books. In states which thus act as their own publishers, textbooks are usually sold at cost or less than cost, any deficit being made up by an increase in the amount required to be raised by taxation (see Chapter XL).

South Atlantic and South Central states where they have been most recently adopted.¹

**Adult
education**

Night schools, which primarily attract persons of defective education who are above the ordinary school age, have been established in more than two hundred cities. Most of the instruction is in elementary classes in English, arithmetic, etc. Night high schools and vocational schools are also carried on in many cities. Many municipalities, among which New York is especially notable, offer free evening lectures in the various school buildings of the city. These are sometimes merely entertaining, but a large part of them have real educational value. Another form of adult instruction is that by correspondence. Originated by private individuals for profit, the idea has now been adopted by the extension divisions of our universities.

**Public
libraries**

The most pervasive and effective method of general education, aside from formal class instruction, is offered by the public library. Every community of the rank of village or above now has a public library. The county library, with its system of loans, by mail or express, to schools, societies, and individuals, has brought

¹ PER CENT OF ILLITERATES IN POPULATION 10 TO 14 YEARS OF AGE

	1900	1910
United States	7.1	4.1
North Atlantic States9	.4
North Central States	1.0	.4
South Atlantic States	17.8	10.0
South Central States	17.2	10.0
Western States	2.8	1.7

The lowest percentages of child illiteracy are found in Oregon, Iowa, and Massachusetts, where it is but two per cent; the highest is in Louisiana, with twenty-four and six tenths per cent. The high percentage of illiteracy in the South is due to the large negro population.

library benefits to even the thinly populated sections. Libraries are generally administered by boards of trustees appointed by the city, village, town, or county appointing authority. They receive no pay, and no better example can be found anywhere of high-class patriotic service. The actual work of administration is carried on by a librarian and assistants, who have usually been trained in one of the schools conducted in connection with the great libraries. Many libraries are magnificently housed, and the generosity of Carnegie and others has enabled even the smaller cities to have library buildings that are commodious and attractive. The support of the library, aside from gifts, comes usually from a portion of the regular city or town tax, set apart for the purpose.

The first provision for higher education in the United States was by endowment. The gift of his estate and library by the Rev. John Harvard was the starting-point of the first of our American colleges, and the other colleges of our colonial period were likewise the result of private benevolence.¹ The balance needed for their support was derived from tuition fees. The first university to be called by the name of a state was the University of North Carolina, founded in 1795. It received state support from time to time, but its government was not placed in the hands of the state until 1875. The University of Georgia, which opened in 1801, and the University of Virginia, which admitted its first class in 1825, were genuine state universities. The land grants in aid of higher education, of which we have spoken, made it the most natural thing in the world to establish a state university in each new state created out of the public domain. This was usually provided for in the constitution of the state. When the agricultural and

Higher
education

¹ Several of them, however, received aid from time to time from the colonial government.

mechanical land grants were made in 1862, some of the states devoted them to special schools for agriculture and mechanics, but most of the Western states simply added such departments to their state universities, thereby greatly increasing their working capital. The largest of the state universities now compare very favorably in equipment, quality of instruction, and number of students with the great endowed institutions.¹ They are free to residents of the state. Non-residents must pay a moderate tuition fee. The state universities are governed by boards of regents or trustees, usually appointed by the governor, but in some instances elected by the legislature or the people. The actual management of the institution is left almost altogether to the president. All of the states provide "normal" schools for the training of elementary teachers.

United
States
Bureau of
Education

The United States, aside from the maintenance of the Smithsonian Institution and the Congressional Library, of which some description has already been given (Chapter XXIV), is engaged in a number of educational activities. The military and naval academies at West Point and Annapolis are the government schools which will first occur to the average person. There are besides several naval training schools of lower grade than the naval academy. Schools are provided for the Indians under the direction of the Bureau of Indian Affairs. The schools for the natives in Alaska are conducted directly by the Bureau of Education, whose principal work, however, is in gathering statistics and studying the several school systems of the country. It has published a great number of reports, and while it has no power to command the educational authorities of any state, it has by its influence accomplished much in the way of raising educational standards.

¹ The University of California ranks second to all universities in the United States in point of attendance, being excelled by Columbia alone.

Among its other duties it has the supervision of the expenditure of federal appropriations for the benefit of colleges of agriculture and the mechanical arts. These institutions now receive about \$2,500,000 a year from the United States.

SUGGESTIONS FOR FURTHER STUDY

Among general books reference may be made to REED, pp. 215-229 (on the state administration of education). BEARD, pp. 624-627, 746-751, and *American City Government*, pp. 311-333; HART, A. B., *Actual Government*, pp. 535-554; MUNRO, W. B., *The Principles and Methods of Municipal Administration*, ch. ix. See also *Encyclopædia of American Government* and *American Year Book*.

The leading work on educational administration is DUTTON AND SNEDDEN, *Administration of Public Education in the United States*. A book suggesting numerous administrative reforms is CUBBERLEY, E. P., *State and County Educational Reorganization*. The same author's *School Funds and Their Apportionment* is worthy of notice.

On the general development of education see DRAPER, A. S., *American Education*, and BOONE, R. G., *Education in the United States since the Civil War*; MONROE, PAUL, *A Textbook in the History of Education*; DAVENPORT, E., *Education for Efficiency*; DEAN, A. D., *The Worker and the State*; LEAKE, A. H., *Industrial Education, Its Problems, Methods, and Dangers*; McCANN, M. R., *Fitchburg Plan of Coöperative Industrial Education*, U. S. Bureau of Ed. Bulletin, 1913, No. 50.

MONROE, PAUL, *Cyclopedia of Education*, is, whenever available, an almost inexhaustible source of information on all phases of the subject.

The reports of the United States Commissioner of Education, the bulletins of the Bureau of Education, and the reports and other publications of state and local school authorities contain material which can be utilized.

Topics:

The State Administration of Education, Universities, Colleges, Academies, County Administration of Education, Organization of Local School Boards, Industrial Education, Evening Schools, Free Lectures, all localized as much as possible, make excellent topics.

CHAPTER XXXII

THE PRESERVATION OF PUBLIC HEALTH

The filth theory of disease and its consequences

THE modern public health movement began in the first quarter of the nineteenth century with the development of what is known as the "filth theory" of disease. According to this theory disease germs originated in decaying animal and vegetable matter, and were transmitted largely by water and through the air. It gave great impetus to the adoption and enforcement of strict laws with regard to the removal of nuisances, the building of sewers and the sanitary disposal of sewage, the systematic collection of garbage and other wastes, and the improvement of water supplies. The activity of cities in the matters of sewage, garbage, and water supply will be discussed in a later chapter (Chapter XXXIX). It is sufficient for our present purpose to know that the purification of sewage before permitting it to flow into lakes or streams and the proper care of water supplies did greatly reduce, although it has by no means eradicated, certain diseases, such as cholera, typhoid fever, and other intestinal complaints, the bacteria of which are carried by water. Indirect encouragement was given by this theory to the systematic isolation of persons afflicted with contagious diseases. If by destroying filth you could destroy the original source of disease, and by isolating cases of contagious disease cut off the chance of direct infection, the battle against disease would be largely won.

Unhappily, however, the efforts at city cleanliness and the isolation of contagious-disease patients only in a slight degree reduced the prevalence of disease. This

set the scientists to searching for a new theory as to the origin and transmission of disease. As now explained by the best authorities, most disease-producing organisms flourish only in the human body, living but a short time outside of it. Filthy conditions are more favorable than clean ones, but filth can no longer be considered a source of disease. Except in such diseases as typhoid fever, in which the germs are contained in large numbers in human excreta and are easily carried in milk or water, most infection comes directly from a diseased person or indirectly through his personal contact with the food or drink of the victim. The causative organisms of a few diseases like yellow fever and malaria are transmitted exclusively by insects. Tuberculosis of the bones and intestines may be acquired from the milk of tuberculous cows. The most prolific sources of infection, aside from polluted milk and water, are now held to be the unnoticed or "atypical" cases of contagious disease and "carriers." These last are persons who, having had a disease and being apparently again in good health, carry with them swarms of disease bacteria.¹

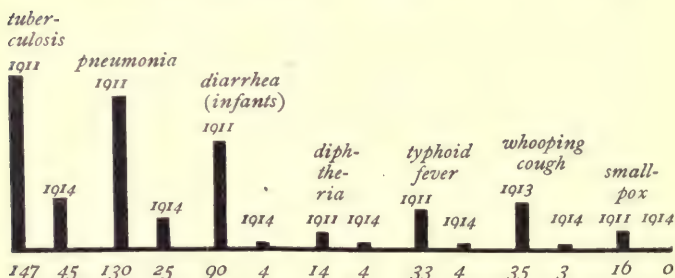
Modern theory of the origin and transmission of disease

This new theory with regard to the sources and modes of infection indicates that there are only a few diseases which we can hope immediately to stamp out through sanitary improvement in our environment. Yellow fever has been absolutely extirpated in Havana, where it had

Triumphs of sanitation

¹ A striking example of this sort is found in the history of the *Acme*, a vessel sailing out of San Francisco to other Pacific Coast points. On every voyage one to three cases of typhoid fever developed among the crew. Careful investigation of the food and water supplies of the vessel failed to show any source of infection. Finally an officer of the state board of health discovered that one of the crew was a carrier. He conveyed the disease to his shipmates by using the common drinking cup attached to a barrel of water on the ship's deck. Every time he quenched his thirst, his dirty thumb and forefinger went into the water. He was kept several months in a hospital in San Francisco, but on his next voyage he infected two of his shipmates.

raged for centuries, simply by destroying the mosquitoes which were its sole carriers. The United States dug the Panama Canal without a single death from yellow fever, which by its awful ravages had ruined the French attempt. Other diseases may be stamped



A diagram showing what can be done when a conscientious, energetic, and enthusiastic physician gives his whole time to looking after the health of the people. This is the record of the health officer of Robeson County, North Carolina, who received his appointment in March, 1912. Contrast the number of deaths from certain diseases, in 1911, the year before he began work, and in 1914, after he had been at work three years.

out where a definite source of the disease is known. The bubonic plague was destroyed in San Francisco by a systematic destruction of rats and other vermin, including the ground squirrels of the neighboring hills.

Vaccination

Where, however, the definite source of disease is not known, as in smallpox, and in many cases where, as in typhoid fever, precautionary measures are not always to be relied upon, the most effective means of combating the disease is by vaccination or inoculation. Vaccination for smallpox has been in use for over a century, having been discovered by Dr. Jenner, an Englishman, in 1796. The virus with which the inoculation is made is derived from sores on calves. Many people object to vaccination, but experience has shown that during the life of the vaccination, — that is to say, about seven years, — it is an

almost absolute preventive against smallpox. Vaccination is compulsory for all persons in Germany and other European countries. In this country school children must usually be vaccinated before entering school and always in case of epidemic. By its general use smallpox, once one of the scourges of the world, has been reduced to an inconspicuous place in the roll of diseases. Vaccination is now practiced for typhoid fever with great success. Every person who by vaccination secures immunity from a disease protects not only himself but the community through which he might otherwise help to spread it. Diseases from the use of unclean virus were rather frequent in the early days of vaccination. The purity of the vaccine is now very carefully maintained under the regulation of the Public Health Service of the United States, so that at the present time there is practically no danger from this source.

Of course there should be prompt report of every case of contagious disease and prompt measures taken for the isolation of the patient at his home or in a hospital. Indeed, it is only in this way that the majority of our acute infections can be controlled. One of the great advantages of free public hospitals and dispensaries is that persons who are feeling badly are encouraged to resort to them. In this way, if the patient has a contagious disease, early notice is had of it and suitable measures can be promptly taken.¹ Strict laws forbidding the use of roller towels, common drinking cups, and other similar means of spreading infection have now been adopted in several states and should become univer-

**Measures to
be taken
against
direct
infection**

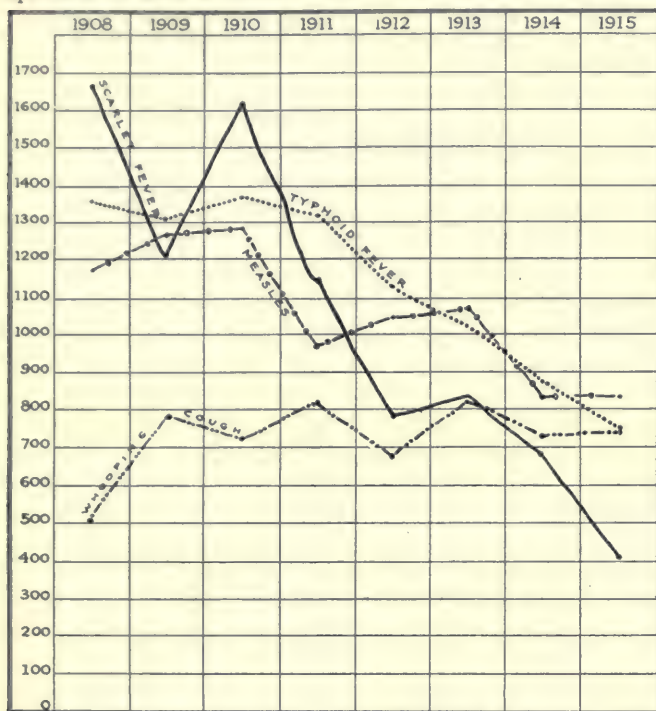
¹ Coöperative medical associations, in which the subscribers are for a moderate fee entitled to medical attendance, if properly managed work to the same end. It is to the interest of the association and its physicians to nip every epidemic in the bud. Some form of coöperative medicine will probably be the outcome of the vexed question of doctors and their fees.

sal. Medical inspection of schools has proved one of the most effective means yet devised for controlling the infections of childhood, because it enables health officials to locate cases of disease in the early stages.

**The milk
problem**

Milk, as you already know, is one of the chief foods of the human race. During the first two years of life it is almost the only food. On the other hand, disease and other bacteria multiply rapidly in it. Under modern conditions a city milk supply is from twelve to forty-eight hours old before it reaches the consumer. Time is thus given for the development of the bacteria. If the milk is dirty when it starts, is improperly cared for in transit, or is handled by unclean persons at the city milk depot, it may well be in a condition to prove fatal to infant life. The work of milk inspection is mostly done by local boards of health. They take samples of the milk as it arrives in the city, and analyze them. If they show disease bacteria, or too many bacteria of any kind, or if they fall below the standard fixed by state law or city ordinance for good milk, the milk dealer is first warned, and for a second offense his license is revoked. Local boards of health also send their inspectors into the country to look into the conditions under which milk is produced. They examine the cattle for evidence of tuberculosis, and direct reforms in methods of handling milk. Milk produced under certain approved conditions and containing a high percentage of butter fat may be "certified," in which case it is usually sold at a higher rate than ordinary milk. Many cities permit the sale of various grades of pure milk, provided they are clearly marked for what they are. State boards of health also do something in the way of dairy inspection. Great economy in administration could be secured if the whole matter of milk inspection were handled by the state boards. At present

the same dairy will frequently be gone over by the inspectors of half a dozen cities. The Bureau of Animal



A diagram showing the number of deaths in New York State from four common diseases within a period of eight years. With continued good work by the public health officials and an increase in the understanding by the people of the precautions to be taken regarding scarlet fever and typhoid fever, the lines for these diseases will before many years reach the zero point. The whooping cough line will fall just as soon as the dangerous character of the disease is comprehended and the people join the health officials in efforts to control this malady.

Industry of the Department of Agriculture has accomplished much in the improvement of the health of cattle. In methods of dairying it has established standards which have had great educational value. It has, however,

proved very difficult to secure a safe milk supply by inspection and supervision, and many cities now require that all the ordinary market milk supplied to their inhabitants shall be Pasteurized before it is offered for sale.

**Pure Food
and Drugs
Act**

The first important pure-food legislation was adopted by Congress in 1906. This so-called Food and Drugs Act, which is administered by the Bureau of Chemistry of the Department of Agriculture, forbids, broadly speaking, the privileges of interstate commerce to any food or drug (1) which is misbranded, *i.e.* is not exactly what its label represents it to be, or (2) which contains any substance dangerous to health. Since 1913 it has applied to interstate shipments of meat and meat products. Meat inspection is carried on by the Bureau of Animal Industry under this act and under the older meat inspection acts. It inspects, however, only meat intended for interstate commerce, except where city or other local authorities voluntarily avail themselves of its assistance. Meat inspection is usually left to the local board of health and is conducted spasmodically. Meat rejected in one locality is frequently sold in another. Many of the states also have something in the nature of pure food laws, which are enforced, if at all, by the state board of health.

**The fight
against
tuberculosis**

The disease now making the most fearful ravages among our people is tuberculosis. A comparatively small number of those suffering from certain forms (bone and intestinal) of this disease have received it from contaminated milk or other animal foods. The great causes of the disease are bad nutrition and lack of light and air. The germs of tuberculosis flourish in the dark, airless interior rooms of tenements. The poor tenement dwellers, weakened by lack of wholesome food, fall easy victims to it. Their own carelessness helps to spread the germs which swarm in the sputum of the sick. Effective combative



Milking time in a sanitary dairy near Stamford, New York.



Making butter in a sanitary dairy. Here are employed the most up-to-date butter-making devices invented.

agencies are fresh air, sunshine, and good food, and it has been truly said that tuberculosis is a social rather than a medical problem. The correction of those economic conditions which leave a large proportion of our people underfed and badly housed is fundamental. In the meantime, good instruction will help people to do the best they can with what they have. Sanatoriums to which poor patients may be taken for recovery, to prevent the infection of other members of their families, are indispensable. Charitable assistance has its important part. So far, the battle against tuberculosis has been waged largely by private anti-tuberculosis societies. It will have to be won by the combined efforts of all good people. Up to date, only preliminary skirmishes have taken place. The most hopeful thing about tuberculosis is that we know what we have to fight and that every effort made shows an improvement in the situation.

The distinctively public health work of the federal government is carried on by the Public Health Service, a bureau of the Treasury Department.¹ The Public Health Service has fostered scientific research into the problems of disease, perhaps its greatest triumph having been the discovery that the germ of yellow fever was carried exclusively by a certain mosquito. It has magnificent laboratories and a corps of forty or fifty research workers. Each year it holds a conference for state health authorities and in addition publishes weekly "Public Health Reports," which contain the latest facts with regard to the prevalence and distribution of disease. It is charged with the enforcement of quarantine regulations in the ports of the United States and in connection with interstate

**The United
States Public
Health
Service**

¹ This peculiar location for such a department is to be accounted for by the fact that the first laws passed by the United States on the subject of public health were laws ordering the customs officials to cooperate with state officials in enforcing state quarantine laws.

traffic.¹ It conducts hospitals and a tuberculosis sanatorium for seafaring men. It inspects all immigrants. A very important duty is the regulation of interstate traffic in serums, vaccines, etc., which has resulted in the establishment of a high standard of purity in these articles. The work of the Bureau of Entomology of the Department of Agriculture, in studying the habits and characteristics of mosquitoes and methods of exterminating them, deserves notice. The Bureau of the Census also collects vital statistics from certain "registration" areas, almost the only effective work of this kind which is done in the United States.

State boards
of health

The first state board of health was established by Massachusetts in 1869. There are now forty-seven of them. They vary a great deal in their powers. Most of them have very considerable powers of ordering localities quarantined for the suppression of epidemics. A large part of the time of all of them is taken up with the enforcement of the laws against nuisances. Some boards conduct hygienic laboratories, engage in the enforcement of pure food and drug laws, and gather and publish statistics and other information relating to health. Their power over local boards of health is very limited.² As a matter of fact, the most important things which a state board of health can undertake are the collection of facts

¹ An illustration of the use of this latter power is found in the case of bubonic plague in San Francisco, when certain of the authorities of this city and of the state of California declared, during the first appearance of the plague, about 1900, that no plague existed there. The Public Health Service found that it did exist and took measures to suppress it. Since 1903, when a new state board of health was appointed, every assistance has been given by the state board to the Public Health Service.

² Minnesota presents a striking exception to the general rule that state boards of health have small mandatory powers. In that state the state board of health may make public health regulations which, with the approval of the attorney-general, have the force of law. It may, if there is no local board of health or only an inefficient one, appoint a temporary board.

about disease and the supervision of local boards of health. Such supervision may be made effective simply by publishing comparative reports of the health conditions of different communities. State boards of health usually consist of physicians who serve without pay, the actual direction of the work being in the hands of a paid secretary.

The laws of most states now generally require a board of health in each city or town (this board frequently is the city council), and impose similar but less stringent duties on the governing body of the county. The local health authority is usually obliged to keep a record of births and deaths, and to enforce the laws of the state and the ordinances of the city or county with regard to the removal of nuisances. It is also charged with the task of milk, meat, and other food inspection, the inspection of plumbing, and other similar duties.¹ The local board of health usually consists of physicians, with an occasional engineer or plumber, and receives no salary or next to none. In the larger places it acts through a health officer and a corps of assistants and inspectors. There is a tendency now to relegate the board to an advisory position and fix most of the responsibility on the health officer. This would seem to be in line with the principles of sound administration.

Local boards
of health

SUGGESTIONS FOR FURTHER STUDY

There is a scarcity of available literature on national and state health administration. *The Encyclopædia of American Government* and the *American Year Book* will supply much information. The reports of the bureaus and departments of the national and state

¹ An important part of the work which should be performed by a local board of health is the collection of vital statistics. Every physician should be required by law to report to it all cases of contagious disease. In some communities this gathering of facts which can afterwards be used by state and national authorities is well done, but too frequently it is neglected.

governments are available and helpful. The health laws of the several states are collected and analyzed in Public Health Bulletin No. 54 of the United States Public Health Service (1912). For a criticism of the present method of organization of state and local health authorities, see BOLDMAN, C. F., *A Plan for the Reorganization of the Public Health Service in the State of New York*, New York City Department of Health Reprint Series, No. 4. The boards of health of California and other states publish bulletins intended to make the subject popular. The United States Public Health Service publishes weekly public health reports.

On municipal health administration, BEARD, C. A., *American City Government*, pp. 261-282, is excellent. ALLEN, W. H., *Civics and Health*, is also useful. GODFREY, H., *The Health of the City*, is interesting. See also BAKER, M. N., *Municipal Engineering and Sanitation*. On the milk question see SPARGO, J., *The Common Sense of the Milk Question*; ROSENAU, M. J., *The Milk Question*; and LEDERLE AND RAYNOR, *The Milk Supply of New York City*, Department of Health Monograph Series, No. 5. On the tuberculosis question see New York City Department of Health Monograph Series, Nos. 1 and 2. The Milwaukee Board publishes monthly "The Healthologist," dealing with the subject in a very popular way. CHAPIN, C. V., *Sources and Modes of Infection*, is the best book on that subject. His large work on *Municipal Sanitation* is excellent but not suited to beginners. HILL, H. W., *The New Public Health*, is an excellent work on the possibilities and methods of controlling acute infectious diseases.

Topics:

The study of the health activities of your state and locality can be divided into any number of topics.

CHAPTER XXXIII

THE CONSERVATION OF NATURAL RESOURCES

UNTIL about twenty-five years ago few people in the United States had stopped to consider the possibility of our great natural resources ever becoming exhausted. The supply of coal, iron, petroleum, and natural gas appeared immeasurably great. The extent of our forests seemed to promise an illimitable supply of wood. After the soil of a certain section became exhausted, there was new territory without apparent limit to take its place. Coal, iron, oil, water power, and forests, indispensable to the conduct of industries, were permitted to pass into the hands of private owners, without any adequate compensation to the government. These things, which should have been used for the benefit of the whole people, were permitted to become the means of aggrandizement of a few. These few, in their mad rush for wealth, wasted what should have been conserved for the permanent prosperity of the country. It was not until 1891 that laws were enacted leading to the creation of a national forest reserve, and it was only in 1908 that President Roosevelt called a conference of governors, members of the House of Representatives and the Senate, the heads of the scientific bureaus at Washington, and many other scientists and notable citizens, to consider the subject of conservation. Out of the deliberations of this so-called "White House Conference" developed the present powerful movement for conservation.

Early attitude toward natural resources

The origin of the public domain of the United States was the cession made by several of the states to the

The public domain

United States of the lands claimed by them west of the Alleghanies. It has been added to by the various acquisitions of territory in North America which ended with the Alaska Purchase of 1867.¹

The sale of public lands under the early acts

At the outset the public lands were looked upon as a source of income to the country, and Congress, by the Land Ordinance of 1785, established for their disposal a system which in its main outlines has remained unchanged to the present time. The ordinance provided for the division of the land into townships six miles square, which were to be again divided into sections one mile square. This method of subdivision has been applied in all subsequently acquired territory. One half of the townships were to be sold intact to groups of settlers, as had been done with the New England towns. The other half were to be sold by sections. An act of 1800 permitted the settler to have five years in which to complete payment. This credit system made for recklessness, and in the end the government had to pass a number of acts for the relief of its land debtors. The general Preemption Law under which a settler, having filed a claim of settlement, might within three years acquire the land at the minimum price of \$1.25 per acre, was in force from 1841 to 1891.

¹ Public lands have been acquired as follows :

STATE	YEAR	LAND ACQUIRED
Cessions of original states		340,000 square miles
Louisiana Purchase	1803	875,000 " "
Florida	1819	70,000 " "
Oregon	1846	288,000 " "
Mexican Cession	1848	523,000 " "
Texas Cession	1850	101,000 " "
Gadsden Purchase	1853	6,000 " "
Alaska Purchase	1867	599,000 " "



Upstream face of the Roosevelt Dam, in the Salt River irrigation project, Arizona.



Scene below an irrigation reservoir near Richfield, Idaho, showing a field irrigated by means of canals and ditches.



In 1862 the first homestead law was passed. It gave any citizen of the United States the right to secure title to 160 acres of land (320 acres if suitable only for grazing) by residing on it for five years and making certain improvements. An amendment adopted in 1909 reduces the term of residence to three years, and allows five months' absence from the land each year. After fourteen months' continuous residence, title may be acquired on payment of \$1.25 per acre. No land except mineral land is now disposed of except to actual settlers. The Desert Land Act permits the acquirement of 320 acres by actual settlers, if a portion of the tract is irrigated. Congress has also passed a number of special acts relating to particular kinds of land, especially coal and other mineral lands, under which their acquisition was easy. Free quarter sections are offered to old soldiers, who need only select their location to receive it.

Homestead laws

Under the Cary Act of 1894 land has been given to several of the Western states in aid of their irrigation projects. Of greater importance is the Reclamation Act of 1902. This act provides that money received from the sale of lands in certain of the Western states shall be employed in irrigation projects. Within the area proposed to be irrigated, land may be taken only under the Homestead Act. The maximum area has been reduced from 160 acres to from forty to eighty acres, and in some instances to as low as ten. The cost of the project is paid by the land benefited, a period of ten years being allowed for this purpose.

Reclamation

It is estimated that in the United States, including Alaska, there have been at one time or another 1,700,000,000 acres of public land; 924,000,000 acres were still in the possession of the United States on the 30th of June, 1912. The accompanying table shows roughly

Where the public domain went

what disposition has been made of the remainder of this magnificent domain.¹ Of the land remaining unappropriated and unreserved, 368,000,000 acres are in Alaska, and the balance represents the poorest and most inaccessible land in the United States. By developing great irrigation projects, a few million acres of this remainder may be made into first-class agricultural land. The bulk of it, however, is suitable only for grazing, and is poor for that.

Of much more importance would be the knowledge of

¹ DISPOSITION OF THE PUBLIC LANDS OF THE UNITED STATES *

	ACRES	TOTAL ACRES
(a) Now held unappropriated and unreserved	682,984,000	
Forest reservations	187,406,000	
Indian reservations	48,326,000	
National parks	4,600,000	
National monuments	1,508,000	
Total now held by the United States		924,824,000
(b) Sold under early acts	235,572,000	
Entered under Homestead Act	127,846,000	
Entered under Coal Lands Act	576,000	
Entered under Timber and Stone Act	13,059,000	
Entered under Timber Culture Act	9,855,000	
Entered under Desert Act	6,218,000	
(c) Bounty land warrants to old soldiers	68,790,000	
Total disposed of to individuals		461,916,000
(c) Granted to states for education	95,766,000	
Granted to states for swamp lands	65,582,000	
(a) Granted to states for railroads, etc.	61,706,000	
Granted to states under Cary Act	473,000	
Total granted to states		223,527,000
(a) Granted to corporations (for railroads, etc.)		80,662,000
Total disposed of		766,105,000

* All data derived from :

(a) Report of Commissioner-General of Land Office, June 30, 1912, except as specifically noted.

(b) Van Hise, *Conservation*, pp. 293-294.

(c) *Cyclopedia of American Government*, vol. iii, p. 97.

how much of the public lands has fallen into the hands of large corporations. Aside from the grants which were



Principal irrigation projects in the western part of the United States. (Redrawn from maps furnished by the United States Reclamation Service.)

made directly or through the states to aid railroads and similar enterprises, the laxity of the administration of the land laws enabled individuals and corporations to gain possession of great blocks of land at ridiculously low prices. The use of dummies under the Preëmption and Homestead acts was a favorite method of the land grabbers. Much valuable mineral and timber land was obtained under these acts because of careless classification of government lands. With the growth of the conservation movement a new spirit has come into the administration of the public domain. Unhappily it is too late to save more than the wreck of our great national patrimony.

Coal

The most important of the mineral resources of the United States is coal. Coal was made by nature through a process which can never be repeated, and there is no possibility of increasing the source of supply except by the discovery of new beds. The territory of the United States has been very carefully gone over for coal, so that such new discovery is not very likely to occur. Each succeeding decade has shown a production of coal equal to the total production up to the beginning of that decade. If this rate of increase continues, the total coal supply will be exhausted in about one hundred and fifty years. We may, however, be comforted by the thought that we have seen the danger in time. Only about one tenth of the total coal supply of the United States has been exhausted, and a great deal can be done by encouraging economy in the mining and use of coal.

Until 1873 coal lands were disposed of on the same terms as other public lands. Even since the passage of the act of that year, many millions of acres of coal lands have been acquired as agricultural lands. The act of 1873 provided for the sale of coal lands at not less than \$10 an acre when they were more than fifteen miles from the railroad, and not less than \$20 an acre when they were within fifteen miles of the railroad. For the twenty-three years next ensuing, the Interior Department sold such lands at the minimum price required by the law. In 1906 Secretary Garfield raised the price to \$75 to \$100 an acre. By an act passed in the same year, Congress provided that where land has been entered as agricultural land and coal is afterwards discovered, the government may dispose of the coal under the coal-land laws. In the meantime Secretary Garfield had withdrawn for classification by the Geological Survey over 75,000,000 acres of supposed coal land. These withdraw-





Redrawn from map supplied by U. S. Forest Service

Map showing extent of the national forests in the United States, Alaska, and Porto Rico.

als have been increased from time to time since, and now include most of the extremely valuable coal lands in Alaska. It has long been contended by those most familiar with the problem, that coal land should not be sold but should be leased at a certain royalty per ton. A resource so important as coal should be retained in the ownership of the government, which should dispose of nothing more than the right to take out coal for a given period and according to methods prescribed by the government. It is only in this way that the rights of the people can be adequately protected.

The quantity of petroleum now known to exist in the **Oil** United States is more limited than that of coal. While somewhere between eight and ten times as much petroleum remains to be taken as has yet been brought to the surface, the increase in the total production has been so rapid as to indicate the complete destruction of the entire supply within the lifetime of persons now living. The surest proof of the probable failure of the supply within a comparatively short time is found in the rapid decline of the New York and Pennsylvania fields. If it had not been for the productivity of the comparatively new California and Oklahoma fields, the total production of petroleum must have already begun to decline. The oil fields having been largely in the hands of a single great company, which has clearly recognized the limited nature of the supply, oil has been produced without the excessive wastes which have marred the coal industry. For a long time the government made no more effort to restrict the acquisition of oil lands than it did of coal lands. It was only toward the end of the Roosevelt administration that they were first withdrawn from private entry under the homestead laws. The principle

of leasing rather than selling applies to oil as well as coal lands.

Natural gas

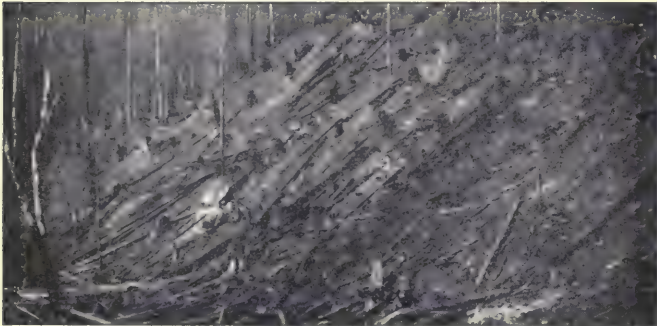
Natural gas, the ideal fuel, has been more wantonly wasted than any other of our natural resources. A few years ago the waste equaled the production. In the last few years, however, a good deal has been done to prevent it. The present most important cause of waste is the escape of gas from oil wells. The oil operators are very careless of the gas found in looking for oil, generally letting it escape. Laws have been passed in several states compelling the saving of gas in these circumstances. The increased value of gas as a source of gasoline has also induced oil men to utilize it.

**Creation of
forest
reserves**

Originally a large portion of the area of the United States was covered by forests. In the early days, the clearing of the land being absolutely essential to the development of the country, no thought was given to their preservation. It is only within the last twenty years that the public has been aroused to a realization that the clearing of the forests has tended to give streams an uneven flow, very detrimental to navigation, and to promote sudden and destructive floods, which cause the soil to be wasted from the surface of the land and cover parts of the lower land with débris. At the same time the entire destruction of our merchantable timber began to be imminent. In 1897 Congress created a Bureau of Forestry in the Department of Agriculture, and Gifford Pinchot was appointed its chief. Portions of our forest lands were withdrawn from sale, and the area of the national forests has been gradually increased to 187,000,000 acres. Several of the states, notably Minnesota, Montana, New York, and California, have created reservations, totaling nearly 10,000,000 acres. Settlement under certain conditions is permitted within the forest reservation, and the harvest-



A deforested slope where the rainfall is lost.



A forest which has been cut over and burned.



Showing damage done by a flood in the lower course of a stream, due to deforestation of the watershed.

ing of mature timber which would only diminish in value is provided for.¹

The forest area owned by private individuals, however, is at least four times as great as that owned by the public. In these privately owned forests, timber generally speaking is cut without regard to its replacement by future growth. The cutting of timber, even if it is done under the best conditions, wipes out a far greater quantity than can possibly be made up by natural growth. At the present time there are great wastes in cutting. No care is taken to save the new timber. All the mature trees are cut, leaving no seed trees, and frequently immature trees are cut, instead of being left to grow. High stumps are left, and the ground after the lumbering has been completed is littered with limbs and tree tops, which greatly increases the danger of fires. Greater economies are possible also in sawmills and factories. Many trees, especially in the South, are destroyed to obtain a little turpentine. The most spectacular cause of waste is the forest fire. These fires destroy vast quantities of property, sometimes wiping out whole villages and leaving in their wake a trail of misery and death. The loss of property alone has amounted in the past to about \$50,000,000 a year. Furthermore, land which has been burned over two or three times becomes incapable of sustaining a good growth of timber. In the national and state forests fire patrols have been established, so that the conduct of campers can be regulated and fire quickly discovered. Lanes are cut through the forests at strategic points to prevent the spread of fire. After logging operations have been carried on, all the débris must be burned. Several

**Causes of
forest
destruction**

¹ The total receipts of the government from this source for the year ending June 30, 1913, were \$2,500,000. The law requires that thirty-five per cent of this money be handed over to the states in which the forests are situated, for the improvement of their schools and other public institutions.

of the states have passed general fire laws, applicable to all forests, but most of them are not very effective. Private owners are only just beginning to realize the economy of maintaining a fire patrol.

SUGGESTIONS FOR FURTHER STUDY

Among the general books on government the following useful references may be pointed out: BEARD, pp. 401-416, and *Readings*, pp. 361-374; HART, A. B., *Actual Government*, pp. 320-341. REINSCH, P. S., *Readings on American State Government*, contains a good deal of information on this subject. See also *American Year Book*. SHALER, N. S., *The United States of America*, gives much fundamental matter.

It is impossible, however, to do much with the subject of conservation without the use of some of the special works on the subject. The easiest of these to read are CRONAN, R., *Our Wasteful Nation* (1908); PINCHOT, GIFFORD, *The Fight for Conservation* (1910). VAN HISE, C. R., *The Conservation of Natural Resources in the United States* (1911), is comprehensive in its scope and very valuable. TREAT, P. J., *National Land-System* (1910), is an excellent work on the conservation side of the question. Various writers on *Conservation of Natural Resources* in *Annals of the American Academy*, xxxiii, No. 3, and *Transactions of the Commonwealth Club of California*, vol. 7, pp. 69-314, and ROOSEVELT, T., *The New Nationalism*, pp. 49-76 and 77-105, may also be useful.

- The most important publications relating to this subject are, however: *Proceedings of a Conference of Governors in the White House, May 13-15, 1908* (Government Printing Office); National Conservation Commission, *Report* (1909), Sen. Doc. 676, 60th Congress, 2d Session; Commissioner-General of the Land Office Annual Report; U. S. Geological Survey, *Mineral Resources of the United States*. The last-named bureau also publishes reports on each metal separately before combining them in the bulkier report referred to above. See also *Proceedings of the National Conservation Association*, *American Forestry Association*, etc.

Topics:

Reports may be assigned relating to the various resources of our nation, and to the methods for their conservation.

CHAPTER XXXIV

MONEY AND BANKING

AMONG the functions earliest assumed by the federal **Value** government were those relating to money. Before we can understand them we must first become familiar with the fundamental economic principle of value. At a very early stage of civilization men began to exchange the products of their labor, a stone hammer for a dozen flint-headed arrows, or a beaver skin for a bundle of dried fish. The worth of any commodity as measured by other commodities is its value. Value in this sense is always a relative thing. It is determined by the demand for the commodity and the supply of it available to meet the demand. If the demand is increased and the supply remains the same, the value will increase, but as it increases, the demand will fall off. A person who would demand a new hat if one could be secured for one pair of shoes will get along with his old hat when he finds that he has to give two pairs of shoes for a new one. On the other hand, an increase of the supply increases the demand by bringing the commodity within the reach of persons who would otherwise do without it.

While in the most primitive society exchanges are made by simple barter, a medium of exchange soon becomes necessary. You have made a coat which you do not need for yourself and desire to exchange for shoes, a hat, etc. Smith, who wants a coat, has, however, nothing to offer in return but ten bushels of corn. It will be very inconvenient for you to peddle the corn among the possessors of the articles you desire, even if they all want

**A medium
of exchange**

corn, which may not be the case. If, however, there is some commodity which is so readily exchangeable for other commodities that every one in the community is ready to take it, Smith will sell his corn for it and buy your coat, while you may take what Smith pays you and buy to suit yourself. It is desirable that this commodity be durable, so that it will not spoil on your hands. It should be capable of exact division, so that it may be used to measure all kinds of values. It should itself be so valuable that it will not require a great bulk of it to make a purchase. It should be plentiful enough to make all the exchanges that are required. Such a medium of exchange is called "money." It should be of even quality and of a generally recognized and stable value.

**Primitive
money**

In the course of human history a great variety of things have been used for money. The skins of animals, dried fish, cattle, corn, and tobacco are a few of many mediums of exchange among primitive peoples. The North American Indians used wampum, the ends of black and white shells found on the shores of Long Island, polished and strung, which were much sought after as means of ornament. The baser metals, such as copper, tin, and iron, were early used as money. If you will reflect for a moment you will readily see that none of these kinds of money possesses the qualifications which we have laid down for a satisfactory medium of exchange. As soon as gold and silver came to be produced in sufficient quantities to be available for this purpose, they soon displaced all other forms of money. They fulfill more nearly than any other commodities the conditions required of a medium of exchange. Precious stones are too breakable and are incapable of exact division. Platinum is too rare. Iron and the other base metals are too plentiful. Although, as we shall see, gold and silver are not the only substances

used for money, they are the basis of the monetary system in all civilized countries.

Money serves not only as a medium of exchange, but as a measure of value. We never speak of the value of boots in terms of hats or neckties, but in terms of money. The value of any article expressed in terms of money we call its "price." When a financier speaks of a "period of falling prices," he means a period in which the value of commodities in general, as compared with money, is falling. Money has a value like any other commodity, and other things being equal, it falls or rises as the amount of it in circulation is increased or diminished. When prices are generally low, the value of money may be said to be high; when prices are generally high, the value of money is low. If the volume of exchanges to be carried through increases without a corresponding increase in the amount of money, the effect is, of course, the same as if the exchanges had remained the same and the amount of money had decreased. As between two kinds of money, the one of less value always tends to drive the other out of circulation. For example, suppose gold and silver to be circulating side by side at a ratio fixed by law. Then suppose a tremendous increase in the production of silver. The natural result is a fall in the value of silver. Silver will be worth more coined than as bullion, and men will rush to coin all the silver possible. The gold in a gold coin will be worth more than the silver in a silver coin of the same nominal value. It will be more advantageous to hold gold as bullion than as coin, and it will therefore pass out of circulation. These two economic laws, that the value of money varies as the amount of it in circulation and that the cheaper money always drives out the more costly, are very important to an understanding of the monetary system of the United States.

**The value of
money,
prices**

Paper
money prior
to 1787

The most common coin in the American colonies was the Spanish dollar or "piece of eight." The colonists early fell into the error of issuing excessive quantities of paper money. Unable or unwilling to meet the annual expenses of the government by taxation, the colonists resorted to issuing promises to pay. There was always the same indisposition to lay taxes to redeem these promises, as to meet the original outlay. The only escape was to postpone the time of redemption or to issue new bills. The result was that the amount of this paper currency rapidly increased and its value as rapidly depreciated. In several of the colonies the paper money came to be worth little more than a tenth of coin to the same nominal amount. The paper currency was generally made "legal tender," that is, if tendered in payment of a debt it had to be accepted at its face value. This was very advantageous for debtors. As is usually the case in newly settled countries, there was always a large portion of the population eager to take this advantage. Indeed, it must be regretfully admitted that the efforts of the English government to put an end to these indiscriminate issues of paper money were among the principal causes of friction between the mother country and the colonies. It is not surprising, therefore, that when the colonies found themselves confronted with the necessity of armed conflict they promptly resorted to the printing press as a source of money supplies. By the beginning of 1781, a dollar of "Continental" paper currency was worth less than two cents in specie and soon ceased to have any value whatever. Another wave of paper-money madness swept the states in 1785 and 1786, but it was short-lived. The Constitution of the United States forbade the states to issue bills of credit and omitted to give any such power to Congress.

The Constitution gave Congress exclusive power to "coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures." Congress by the law of 1792 took the Spanish dollar as the basis of a decimal system of coinage. The amount of silver in the dollar was fixed at $371\frac{1}{4}$ grains of pure silver. The gold eagle, or ten-dollar piece, was to contain $247\frac{1}{2}$ grains of pure gold. The ratio between silver and gold was therefore about fifteen grains of the former to one grain of the latter. This corresponded pretty closely to the market value of the two metals, but silver soon cheapened and drove the gold out of circulation.

In 1834 and 1837 Congress passed laws changing the ratio, so as slightly to overvalue gold. The gold eagle has since contained 232.2 grains of pure gold. The effect of this change was slowly to displace silver, especially after the gold discoveries of 1849 had greatly increased the world's supply of the yellow metal. The act of 1873 dropped the silver dollar altogether. At the time this raised no complaint, as the coin had long been obsolete, but within three years the production of silver had so vastly increased as to reduce the gold value of a silver dollar to ninety cents. The owners of silver mines joined with the millions who saw in the hard times which prevailed a reason for more money. The demand for the remonetization of silver became so great that Congress passed in 1878 the so-called Bland-Allison Act, which provided for the purchase by the United States of from \$2,000,000 to \$4,000,000 worth of silver each month, to be coined into silver dollars. This did not meet the desires of the silverites, and in 1890 the "Sherman Act" required the Secretary of the Treasury to buy 4,500,000 ounces of silver each month, paying for it in treasury notes issued for the purpose. This act was repealed in

The coinage

1893, and the purchase of silver bullion by the United States ceased.¹

The gold coins at present in use are the eagle, double eagle, and half eagle. Of the silver coins, there are the dollar, half dollar, quarter dollar, and dime. To obviate the necessity of carrying awkward weights of gold and silver, the United States issues what are known as gold and silver certificates. They simply represent so much coin or bullion deposited in the United States treasury. Gold certificates are issued in denominations of from ten to ten thousand dollars. Ninety per cent of the silver certificates are in denominations of less than ten dollars. Except in the extreme Western and Southern states, it is only rarely that one sees metal money other than the fractional currency. The only other coins now in circulation are the "nickel" (five cents) and the bronze one-cent piece.

**Government
paper money**

As we have seen, the Constitution of the United States specifically denied to the states the power to issue paper money, and failed to give any such power to Congress. During the War of 1812, following the panic of 1827, and in the course of the Mexican War, the United States issued treasury notes bearing interest, which were not a legal tender. A similar expedient was tried during the Civil War, when over a billion dollars of such notes were put into circulation. While these issues passed from hand to hand like money, they were really only the evidences of short-time voluntary loans. When the immediate crisis was past, they quickly disappeared.

Of very different character were the legal-tender notes,

¹ Coinage of silver dollars came to an end in 1905. The gold dollar, which is the standard of our coinage system, ceased to be coined in 1890, as did the three-dollar piece.

or "greenbacks," of which the issue of \$450,000,000 was authorized by Congress during the course of the Civil War. The amount of specie in circulation in 1861 had been only about \$250,000,000. It is not surprising, therefore, that the proportionately very large amount of greenbacks suddenly forced into circulation should have suffered depreciation. By 1864 they were worth only fifty cents on the dollar, measured in gold. Prices more than doubled, and as wages increased less than fifty per cent, a good deal of hardship followed. The issue of these greenbacks constituted a forced loan levied upon that portion of the community least able to pay it. Of course, there was grave doubt of the constitutional right of Congress to issue legal-tender paper money. The Supreme Court, in 1869, by a vote of five to three, held that the legal-tender acts were unconstitutional, and then in 1871 reversed itself and held them constitutional on the ground that the power to emit legal-tender bills was a part of the power to make war. By an act of 1875, Congress provided that, beginning with January 1, 1879, the greenbacks should be redeemed in specie. In 1878, however, Congress enacted that when greenbacks were redeemed, instead of being permanently retired they should be reissued. The Supreme Court likewise upheld this act, on the ground that it is part of the borrowing power of Congress. To keep the greenbacks in circulation, and at the same time have them always redeemable in gold, means the permanent maintenance of a gold reserve of at least \$150,000,000. If, as has happened on certain occasions, it falls below the one-hundred-million mark, the financial world becomes terror-stricken.

A bank note is simply a promise to pay the amount indicated on its face and depends for its value upon the financial soundness of the bank issuing it. One of the

**Bank
notes**

objects which Alexander Hamilton had in mind in urging the creation of a Bank of the United States was to provide a bank-note currency which would circulate throughout the country, and the first and second Banks of the United States supplied that need. Down to the Civil War numerous banks chartered by the several states issued notes. These notes were supposedly redeemable in coin, but as the banks outside of New York, New England, and Louisiana were very little regulated by law, they frequently issued notes to an amount out of all proportion to the assets available for their redemption.¹ At the opening of the Civil War there were about \$200,000,000 of state bank notes in circulation. They were widely counterfeited, and most of them passed at considerably less than their face value everywhere, except in the immediate neighborhood of the bank issuing them.

**National
bank notes**

Partly to increase the market for United States bonds, and partly to provide a better paper money than that which had hitherto existed, it was provided by an act, passed in February, 1863, that banks with more than \$500,000 capital might issue notes to the amount of ninety per cent of the par value of their bonds deposited in the United States treasury as security. The following year a tax of ten per cent was laid on the issues of state banks, which very quickly drove them out of existence. The only bank notes in circulation in the United States, up to 1914, were these national bank notes. The Federal Reserve Act of 1913 provides for notes to be issued by federal reserve banks located in twelve territorial districts. These notes have only just begun to be issued,

¹ There was one very notable instance in 1809, in which a bank, failing, proved to have outstanding \$580,000 of notes and only \$86.46 to redeem them.

as this book goes to press, and it is, therefore, impossible to tell how great a volume they will reach.¹

The monetary history of the United States is full of lessons for the citizen which must not be neglected. From the days of the colonial paper issues down to the present time, there has always been a very respectable portion of the community which has sought relief from the bitterness of hard times by demanding an increase in the circulating medium by a government paper currency or some similar means. Professor Bullock, in his *Monetary History of the United States*, shows very clearly how each of the movements which have resulted has been confined almost altogether to the newer, poorer, or more primitive sections of the country. It is only natural that when prices fall and no one seems to have any money to buy even at the low prices which prevail, simple-minded men should demand that the government increase the supply of money by way of the printing press. We have already gone deeply enough into the subject to realize the danger of yielding to this demand. The ease with which paper money can be issued by the government is its greatest danger. The best resolutions of moderation are apt to yield to the pressure for more and more money which always follows the failure of each successive issue to bring relief. The rise in prices which results from increase in the volume of money at first agreeably stimulates business and then brings on a wild fury of speculation. Wages increase much less rapidly than the cost of living, and distress ensues. Creditors find that the sums due them are paid in a currency the purchasing power of which has been diminished. The era of speculation comes to an end with a crash. The value of paper money then

Dangers of
government
paper
money

¹ The amount of money of several kinds in circulation in the United States can be found in the World Almanac for each year.

rapidly declines with each new issue, until it has no value at all and quietly ceases to exist as money. In the meantime, in accordance with the law which we have already referred to (known to economists as Gresham's Law), the more valuable metallic money has been shipped abroad, employed in the arts, or hoarded, so that after the paper money has run its course there is actually less money than at the beginning. This truth was emphatically illustrated by the financial history of the Confederate States. If issues of government paper money could be scientifically controlled, the case would be far different, but no such control has ever been devised.

**Cheap vs.
sound
money**

The same reasoning which establishes the unwisdom of the issuance of government paper money applies also to the unlimited coinage of silver. In the United States at the present time, gold will be coined free by the government from bullion. Prior to 1873 the same privilege attached to silver. In that year the silver dollar was dropped from the list of authorized coins. This is sometimes spoken of as the "demonetization of silver" or the "crime of 1873." After the repeal of the Sherman Act, the demand for the remonetization of silver became acute. In the presidential election of 1896, the chief issue before the people was the proposition of the Democratic platform, and its candidate, Mr. Bryan, to permit the free and unlimited coinage of silver at the ratio of sixteen to one. This was about the ratio on which silver had been coined under the Sherman Act. As a matter of fact, the actual market ratio between silver and gold was about thirty to one. The adoption of the Bryan policy would have had the effect of driving gold out of circulation and of depreciating by about fifty per cent the value or purchasing power of the dollar. There was much truth in the contention of

the silverites that there had been a general decline in prices since 1873, to the manifest disadvantage of debtors in general and of the great agricultural class in particular. This they ascribed to the absence of an adequate supply of money. The small supply, too, as they reasoned, made easier the control of the money market by the "money kings of Wall Street." However that may have been, a great increase in the production of gold took place at about this time, which, coupled with the increased use of bank credit in ordinary transactions, soon raised to vast proportions the effective circulating medium. Prices have positively soared upwards since 1896, and while it is impossible to say that this has been the result, exclusively, of a greater quantity of money, it has for the time being put a quietus on the desire for "cheap" money.

The most striking thing about the present currency situation is the extended use of bank credit in the transaction of business. To understand how largely this has increased the circulating medium, it is necessary to consider the general nature of banking. Banks make their chief profit out of lending money or, more often, its equivalent in credit. A number of persons desiring to enter this business may be incorporated under the laws of the United States or of any state. They each put into the business a certain portion of their own money. This constitutes the "capital" of the bank. In addition it receives "deposits," which it holds subject to the order of the depositor. These orders are made by "check." Where the person to whom the check is payable is a customer of the same bank, no transfer of money takes place. The amount of the check is simply deducted from the account of one customer and added to the account of the other.

**Bank credits
as money**

The institution known as the "clearing-house" brings about the same result between all the banks of a given locality. To the clearing-house a representative of each

THE FIRST NATIONAL BANK OF BOSTON		5-39
<i>Boston, Mass. 6 November 1916 No. 757</i>		
PAY TO THE ORDER OF	<i>Union Coal Company</i>	<i>\$ 350 ²⁵/₁₀₀</i>
<i>Three hundred fifty and ²⁵/₁₀₀</i>		<i>Dollars</i>
<i>Henry L. Bryant</i>		

A bank check, an important device in modern financial transactions for avoiding the actual transfer of currency.

bank takes the checks on other banks which have come in during the day. These checks are then exchanged for the checks drawn on itself which are in the possession of other banks. Only the balances due after all the checks have been set off against one another are settled in cash.

There is never, at any one time, enough money in the bank to repay all the deposits. Its capital, surplus, and deposits, above the "reserve" which the law, based on experience, requires to be kept to meet the demands of depositors, are loaned at interest. When a bank lends money, it does not deliver to the borrower a quantity of gold or silver or paper money. It simply gives him a credit on the books of the bank for the amount of the loan, less the discount or rate of interest. This credit he checks against just as if it were an ordinary deposit. Thus the bank can not only make loans on the basis of its actual deposits, but on the basis of its credit as well. So long as the public retains confidence in the bank's solvency, it may almost indefinitely enlarge its credit circulating



The National Park Bank in New York City.



Morning scene in the Clearing-house, New York City, where checks are exchanged and differences in accounts between banks are settled.

medium. This is very apparent when we compare the total deposits of banks in the United States with the stocks of actual money in their possession. The total deposits approximate \$17,500,000,000, while the actual money is about \$1,500,000,000, or less than one to ten. The amount of money in circulation in the United States is only, in round numbers, \$4,500,000,000, so that bank credit supplies a circulating medium four times as large as that offered by the nominal currency of the country.

Of course there is grave danger in the inflation of bank credit unless banking operations are carried on with care and conservatism. Undue inflation of credit means that when hard times come there will be a sudden contraction of credit which will paralyze business enterprise. An orchardist with an immense crop of fruit may be helpless without the ability to borrow money to pay for picking, packing, and freighting it to a market. If, in times of inflation, credit is given to persons who cannot repay the loan, it means that in a time of retrenchment legitimate applications for credit will be denied by the bankers. This is what happens when the money market is said to be "tight," and it becomes infinitely worse in those panics which have occurred at somewhat regular intervals throughout our history.

**Danger of
inflation**

It is, of course, apparent that there must be some sort of regulation of banking institutions. Otherwise ignorant, careless, or unscrupulous bankers would work dreadful havoc, not only with the funds of the individual depositors, but with the whole currency situation of the country. The laws of the United States and of the principal banking states are now very strict in the conservatism they impose on the banker. National banks are required to make periodical reports of their condition to the comptroller of the currency. The latter has under his direction a force

**Banking
regulation**

of bank examiners who visit each national bank at some time during the year. If any dishonesty in management is discovered or if the "reserve" falls below a certain level, the examiner has authority to close the bank, pending a readjustment. Certain violations of the law involve the loss of the bank's charter. The administration of state banking statutes is placed in the hands of a state superintendent of banks, or in those of the chief financial officer of the state, such as the auditor or treasurer. This latter arrangement is common in the smaller states.

**Central con-
trol of
banking**

Alexander Hamilton, our first Secretary of the Treasury, in order to facilitate the financial operations of the government, to provide a place of deposit for its funds, and to give leadership to the banking business, induced Congress to create the first Bank of the United States. This bank played a controlling part in the banking business of this country, just as the Bank of England does in that country. After the withdrawal of the deposits from the second Bank of the United States, by Andrew Jackson, the national government ceased to take any interest in banking until the National Bank Act of 1864. The unsatisfactory nature of state banks, as places of safe deposit, led to the establishment of the independent treasury system, by which the money of the United States was kept in the vaults of the treasury at Washington and in the sub-treasuries at New York, Boston, and other places. This system had the great defect of withdrawing large sums of money from general circulation, and keeping it piled up in the government vaults. Subsequent laws made it possible for the Secretary of the Treasury to deposit, on certain conditions, portions of the government's funds in banks. In this way he has been able to come to the rescue in times of financial stringency.

The Federal Reserve Act of December 23, 1913, provided for a federal rather than a centralized control of banking. Under it the country was divided into twelve districts, each with a federal reserve bank. The capital of these banks is to be provided by a subscription to the amount of six per cent of the capital and surplus of each national bank and of such state banks as avail themselves of the law. They are made depositaries for United States funds, and, as this book goes to press, it appears likely that they will be used as the general fiscal agents of the government, thus bringing to an end the independent treasury system. They deal, except in unusual cases, only with banks. Their chief function is to serve much the same purpose as does the great flywheel in a powerful engine. They are intended to steady the banking business and to prevent, as far as possible, the consequences of commercial crises or panics. For this purpose they are empowered to make loans to the "member banks" on the security of good "commercial paper," in other words of debts due the member banks. To make the power of the reserve banks to assist the member banks more certain, they are empowered, with the consent of the Reserve Board, and upon deposit with it of commercial paper to their full value, to issue notes. These notes are redeemable in gold or currency by the bank, and by the United States as well. At least five per cent of the gold reserve of each reserve bank has to be kept in the treasury at Washington to cover redemption there. Each federal reserve bank, on receiving the notes of another reserve bank, does not pay them out again, but is required by the terms of the law to send them to the parent bank or the federal reserve clearing-house for redemption.

**The Federal
Reserve Act**

The Federal Reserve Board consists of seven persons: the Secretary of the Treasury and the Comptroller of the

**The Federal
Reserve
Board**

Currency, ex officio, and five others appointed by the President for the term of ten years. The salary of these appointed members is \$12,000 a year, and their terms are so arranged that they will retire in rotation, one every two years. They have wide powers of supervision and control over the reserve and member banks and the general administration of the law. The initiative in actual banking operations is with the directors of the reserve banks, most of whom are chosen by the member banks. The final decision is with the board. Its powers are negative rather than positive. The whole arrangement is apparently a happy one, for the actual conduct of banking operations is in the hands of bankers, while an effective check against fraud or carelessness is in the hands of a board representing the interests of the public.

SUGGESTIONS FOR FURTHER STUDY

The best general authority on the economic subjects touched on in this chapter which is available for use in schools is TAUSSIG'S *Principles of Economics*. Chs. ix to xiv on *Value*, xvii to xxiii on *Money*, xxiv to xxviii on *Banking*, and xxix to xxx on *Commercial Crises and Panics*, give very full and readable treatments of these subjects and represent the best American thought with regard to them. BULLOCK, C. J., *Introduction to Economics*, is used as a text in some high schools and is probably the most elementary of the really good books on the subject. *The Monetary History of the United States*, by the same author, gives a clear and concise account of many of the matters covered in this chapter. *First Lessons in Finance*, by CLEVELAND, FREDERICK A., gives a simple account of money funds, credit funds, the instruments of their transfer, and the organization of various kinds of banks. The controversy over the question of a central bank may be traced in standard American histories, and in the magazine literature of the last few years. On the Federal Reserve Act the "Journal of Political Economy" for April and May, 1914, and the "Quarterly Journal of Economics" for February, 1914, contain valuable articles.

Teachers may also find useful: KINLEY, D., *Money*; LAUGHLIN,

J. L., *The Principles of Money*; SCOTT, W. A., *Money and Banking*; and CONWAY AND PATTERSON, *Operation of the New Bank Act*.

In no branch of the work in "civics" can the methods of illustration be better used than here. The class may be taught to know by observation the various kinds of money in circulation. It may be taught banking methods by illustrative material, or even better by encouraging the members of the class to become bank depositors. (See *The School Savings System*, by FRANK C. MORTIMER, Cashier First National Bank, Berkeley, Calif.) An excellent idea is to utilize some local banker to explain the banking system and especially the Federal Reserve Act. A visit to the nearest clearing-house may be made the basis of an individual report.

Topics :

Colonial or Confederate Paper Money.

The Free Silver Campaign of 1896.

Coins of the United States.

Paper Money of the United States.

A Bank Account.

A Bank Statement.

The Clearing-house.

CHAPTER XXXV

THE REGULATION OF CORPORATIONS

The corporation

THE typical form of organization for modern business is the corporation. A corporation is an artificial person. In other words, it is a group of individuals associated together for some particular purpose which has as a group the right to hold property, to make contracts, and to sue and be sued. The members of the corporation are known as "stockholders" and their interest in the corporation is represented by the shares of its capital stock which they own. In a simple partnership the individual partners are each liable for all the debts of the partnership, and in case of failure this liability will be enforced against whoever of them has any property. Stockholders in a corporation, however, have no liability or only a limited liability for the debts of the corporation, based on the amount of stock they own. A partnership is dissolved by the death of one of the partners. A corporation has perpetual succession (or succession for the period for which it was incorporated), irrespective of whatever changes of ownership take place in its stock. For the purpose of managing the affairs of the corporation, the stockholders meet once a year and elect a board of directors. They may also determine some of the larger policies of the company. The board of directors usually appoints a manager, to whom they generally give a free hand in the conduct of the business. The president, secretary, and treasurer are sometimes chosen by the stockholders, sometimes by the directors.

Up to the time of the adoption of the Constitution of the United States, corporations had been created only for

CERTIFICATE OF INCORPORATION

OF

SPRING VALLEY DAIRY PRODUCTS CORPORATION

We, the undersigned, being all of full age, and at least two thirds being citizens of the United States of America and at least one being a resident of the State of Vermont, desiring to form a corporation pursuant to the provisions of the Business Corporations Law of the State of Vermont, *do hereby certify:*

FIRST: That the name of the proposed corporation is SPRING VALLEY DAIRY PRODUCTS CORPORATION.

SECOND: That the purposes for which it is to be formed are as follows: [Here specify in clear terms for just what purposes the corporation is organized.]

THIRD: That the amount of the capital stock is to be fifteen thousand dollars (\$15,000).

FOURTH: That the number of shares of which the capital stock shall consist is one hundred and fifty (150) shares of the par value of one hundred dollars (\$100) each. The amount of capital with which the company will begin business is fifteen thousand dollars (\$15,000).

FIFTH: That the principal business office is to be located in the City of Clearwater, County of Good Hope, and State of Vermont.

SIXTH: That the duration of the corporation is to be perpetual.

SEVENTH: That the number of its Directors is to be three.

EIGHTH: That the names and post-office addresses of the Directors for the first year are as follows: [Here insert the names and addresses of the Directors.]

NINTH: That the names and post-office addresses of the subscribers to this certificate, and the number of shares of stock which each agrees to take in the corporation, are as follows: [Here follow the names, addresses, and signatures of the stockholders in the corporation.]

A certificate of incorporation, showing the usual form according to which corporations are organized.

**Develop-
ment of laws
of incor-
poration**

extraordinary purposes for which the wealth of individuals or partnerships were clearly inadequate, and for municipal purposes. The corporate form of organization proved so successful that it is now generally used in every business enterprise, even where some other form of organization would do as well. A corporation originally derived its rights from a charter, issued by the crown in England, but in this country, after the Revolution, by the state legislature. At first these charters were issued without limitation as to time. The United States Supreme Court declared in the famous Dartmouth College Case that a charter was a contract within the meaning of that clause of the federal Constitution which denies the states the power to make laws "impairing the obligation of a contract." This meant that a charter granted without limitation could not be amended or revoked except by judicial proceedings for violation of its terms. Furthermore, the granting of charters by special act resulted in many charters being slipped through the legislature contrary to the public welfare. The result has been that most states now grant charters only under the terms of general laws. These laws require the fulfillment of certain conditions by those desiring to form a corporation and provide for the enforcement of these laws by a corporation commission or some state officer, usually the secretary of state. The privileges of all corporations are uniform under these laws, which also establish rules for the protection of the stockholders in the internal control of the corporation. The term for which the privileges of the corporation may be enjoyed is frequently limited, and provision is made for the amendment or repeal of its privileges.

The general corporation laws of most states provide that corporations shall not issue stock except for money, or in return for services or property actually received.

This is to prevent what is known as "stock watering," or, in other words, the putting upon the market of stock of a nominal value far in excess of the actual investment, a practice which has resulted in gross frauds on the investing public. Another source of fraud on investors has been found to be the extravagant promises of promoters. Kansas adopted in 1911 an act directed at these practices, known as the "Blue Sky Law." It provided that no securities of any corporation might be put on sale without a permit from the bank commissioner, revocable at any time. In 1912 and 1913 nineteen states adopted similar laws, one or two of which have been held unconstitutional. To prevent the undue increase of the stock or bonded indebtedness of public utilities corporations, some states require the permission of the public utility commission before stock or bond issues can be made.

**Blue Sky
Laws**

The most serious of the problems of corporation regulation are those which relate to the mammoth corporations which in popular language we call "trusts." These great combinations, while they seldom have absolute control over the supply of any commodity or service, frequently occupy such a dominant position as to be able to control the prices at which such a commodity or service is sold. Before we can go on to a discussion of the "trust" problem, we must consider the economic principles of monopoly prices and profits.

**The "trust"
problem**

The cost of producing any usable commodity may be separated into the following elements: (1) wages, which includes not only the wages of laborers, but the compensation of the managers of the industry as well; (2) the cost of the tools and the materials used; (3) interest on the capital invested. Whatever may be left over after the cost of production has been repaid, constitutes profits. We have already seen that the value of a commodity in

**Competitive
prices**

the market is determined by the relation of demand and supply. Where competition exists, the value of a commodity depends in the long run on the cost of production. If the value of a commodity is very high in proportion to its cost of production, the enormous profits of those engaged in the business will attract other enterprising persons to enter the field also. The supply will then be increased and the value fall. This will continue until the prices at which the commodity sells will just about repay the cost of production.

**Monopoly
profits**

There is no such limit to the price of a monopolized commodity. It will be sold on the terms which will produce the largest net revenue. We have seen that demand increases with the lowering of the price, and that it decreases as the price is raised. A monopolist tries to fix the price at just that point where sales times price will give the greatest return. There may be two or more such points. A very high price with a few sales may bring in the same or greater net income as a low price and enormous sales. Which of these prices a monopolist will prefer depends upon the conditions which surround the production of his commodity. Some commodities are produced much more cheaply in large quantities than in moderate quantities. This is commonly true of the ordinary things which we use in daily life. It is in this case to the interest of the monopoly to fix a rather low price and develop a great volume of business. Thus it often happens that a monopoly does not treat us as badly as it might. On the other hand, the fact that the demand for the necessities of life is inelastic, *i.e.* does not increase or diminish rapidly with an increase or diminution of the price, gives the monopolist plenty of opportunity for bleeding the consumer.

Some monopolies depend upon the control of the source

of supply. The Standard Oil Company furnishes a good example of this type. While the control of the source of supply by this company is not complete, it has been nearly enough so as to give it a practical monopoly. In the case of the public service corporations which supply our cities with gas, electricity, telephones, and transportation, competition is not impossible, but it is rarely practicable, first because it means a duplication of the plant, and secondly because, as is especially true in the case of the telephone, competition is injurious to the consumer. Still another class of monopolies depends upon the use of some secret process which gives them a great advantage over possible competitors. To this class belong those monopolies which are created and guarded by our patent laws. Secret processes and patents, for example, have had a great deal to do in building up such monopolies as the United States Steel Corporation. There has also been a tendency for firms and corporations in whose business the cost of production diminishes with the increase of the scale on which it is carried on, to unite into larger and larger combinations. When this process of consolidation has left only a few great corporations in any field, it is easy for them to unite for the purpose of controlling the price of their commodity. An excellent example of attempted monopoly of this sort is the so-called Sugar Trust. Our great railway systems have developed into practical monopolies, partly because the cost of transportation decreases with the increase of its volume, and partly for those reasons of expediency which we have referred to in connection with municipal utilities. Competition still exists between railways and between railway and steamship lines, but it is limited to a few points and has ceased to be effective as a means of controlling railroad rates.

**Natural
limitations
of monopoly**

Where a monopoly absolutely controls the only source of supply of a commodity, an example of which it would be very difficult to cite, or where an absolute legal monopoly has been secured under a patent, there is no limit to the monopolist's freedom to fix prices at the point most advantageous to himself. In all other cases, however, there is always a possibility of competition, a fact which influences far-sighted monopolists to keep their prices within bounds. New sources of supply of coal, copper, and iron have within a few years destroyed the hopes of certain would-be monopolists. Of course a monopoly which has simply been secured by the union of a few large producers is in a weak position. A competitor may spring up overnight, and there is no inherent obstacle to his success. There is also a limit beyond which mere bigness is inefficient. A monopoly in exclusive possession of a field of industry for a long time is apt, also, to suffer from dry rot. Its managers are not obliged to be efficient or economical. Positions may be given to favorites, and carelessness may come to prevail in the handling of every detail. This opens the way to its destruction.

**Monopoly
methods**

The weakness of monopolies, as we have already described it in the last paragraph, has resulted in their resort to unfair tactics in dealing with would-be competitors. The first method of crushing a competitor is straight price-cutting. The long purse of the great combination enables it to stand the loss until the competitor has been driven out. Where a competitor does only a local business, the monopolist will cut the prices in his neighborhood, while keeping the prices high, or even raising them, elsewhere. It is thus able to demolish him without loss to itself. Some monopolies sell their goods to retail dealers only on the condition that they carry their goods exclusively, selling only at the price fixed by the monopoly.

As the monopoly goods are apt to be a well-advertised and popular line, many retail dealers are obliged to take its goods and refuse those of competitors.¹

The English and American common law made combinations in restraint of trade, or monopolies, illegal. This meant that the courts would not enforce any agreement for such a combination. This simple provision was for a long time effective in preventing the establishment of a monopoly. Some member of every combination was almost sure to be greedy enough to desert his associates. To get around this difficulty the Standard Oil Company originated what is known as a "trust." Under this arrangement the stockholders of the combining corporations made over their shares to trustees. These persons were to have full power to vote the stock and thus control the affairs of the combination. At the same time they were under obligation to deliver the proceeds to the original stockholders. This ingenious arrangement, however, failed to be permanently effective. The courts held that it was a mere sham, and refused to permit the machinery of the law to be abused in this way. The Congress of the United States and the legislatures of nearly all the states forbade its use. The name, however, has persisted. We continue to apply it to any corporation of mammoth proportions, whether a monopoly or not.

Forms of
monopoly
organization

The next device of would-be monopolies, and one which is still most in use, is that of the holding company. Certain states permit corporations to be organized for the sole purpose of holding the stock of other corporations. The holding company, however, clearly falls within the prohibitions of the anti-trust laws, and if the present

¹ Formerly monopolists gained advantage over possible competitors by special rates or rebates from railways. This has now been stopped by the action of the federal government.

policy of the United States is adhered to it will have to go.

The final stage in the development of monopoly organization is the single giant corporation, controlling directly a whole field of industry. The organization of a monopoly in this way is more difficult than the creation of a holding company, but, once organized, it is safer, as it is much less likely to be successfully attacked under the anti-trust laws.

**Sherman
Anti-Trust
Law**

An examination of the constitution and laws of the several states will show that the development of monopolies has generally been made the subject of drastic prohibition. These state laws have, however, had practically no effect on the great problem of monopoly. Monopolies are nation-wide in their extent, and can only be practically dealt with by national legislation. The federal government was slow to take any steps against the growth of monopolistic combinations, but at length, in 1890, it passed the famous Sherman Anti-Trust Act. This act forbade combinations or conspiracies in restraint of interstate and foreign trade or commerce. This was apparently a fierce attack upon the trusts, but the bark of the Sherman Act proved worse than its bite. New trusts sprang up like mushrooms on every hand. Under the administration of President Taft the department of justice had some success in securing the dissolution of so-called trusts. The most notable of these were the Standard Oil and the Tobacco trusts, dissolved in 1911. The formal dissolution of these combinations, however, had no effect on the price of oil and tobacco, and altered only superficially the manner of conducting these businesses.

The utter impracticability of meeting the trust problem by means of enforcing the Sherman Act is now generally recognized. A combination that is too big will fall to

pieces of its own weight, provided competitors are given a fair chance. A combination which, being not too big, continues to be successful, does so by securing economies in the production and distribution of its commodities. Such combinations have grown up as a result of the inevitable operation of economic laws. The economies are desirable, and to destroy the means by which they were obtained is simply to destroy what the community most needs. Already the old demagogic attack upon all great aggregations of capital as "works of the devil" has given place to general recognition of the service which they render. Our economists and statesmen are now turning their attention to the problem of retaining their benefits and at the same time subjecting them to proper control. In 1903, at the suggestion of President Roosevelt, a Bureau of Corporations was organized in the Department of Commerce and Labor. The head of this bureau, known as the "commissioner of corporations," was given power of investigation into the affairs of corporations which are engaged in interstate and foreign commerce. This was very well as far as it went, but it only just touched the edge of the problem.

Great combinations of capital inevitable and desirable

The most important trust legislation in the history of the United States was adopted in 1914 on the recommendation of President Wilson. One measure, the Clayton Bill, strengthened the anti-trust laws by specifying particular acts which should constitute restraints of trade. Price discrimination and "tying" contracts where they substantially lessen competition were made unlawful. The new law also forbade the existence of holding companies where they restrain commerce or tend to establish monopoly. Interlocking directorates among banks with resources of more than \$5,000,000 were prohibited. Violations of the provisions of the act are to be punished by fines.

Trust legislation of 1914

Another measure, the Federal Trade Commission Law, provided for a commission of five members with terms of seven years, so arranged that only a portion of the commission retires each year. It made the commissioner of corporations chairman of the board, and transferred all the investigatory powers of the former Bureau of Corporations to the commission. One of its principal duties is to aid the courts, when requested, in the formation of decrees of dissolution. With this end in view the act empowered the courts to refer any part of pending litigation to the commission, including the proposed decree, for information and advice. The act further provided that "unfair methods of competition in commerce are hereby declared unlawful" and the commission is empowered and directed to prevent the use of such methods by "persons, partnerships, or corporations, except banks and common carriers."¹ To make this power effectual, the commission has the additional important functions of initiating proceedings and making orders enforceable through the courts. By virtue of this power, too, the commission was given the duty of enforcing much of the Clayton Bill.

SUGGESTIONS FOR FURTHER STUDY

There has been very little written on this subject brief enough or elementary enough for young students. BEARD, pp. 383-386, 721-727, and *Readings*, pp. 358-360, 606-609, deal with the subject briefly. TAUSSIG, F. W., *Principles of Economics*, vol. i, pp. 199-217; vol. ii, pp. 107-114, 419-442, is as understandable as any of the general books on economics. ORTH, S. P., *Readings on the Relation of Government to Property and Industry*, pp. 179-221, collects some excellent material on this subject. A copy of the Federal Anti-Trust Law with amendments may be obtained of the Superintendent of Documents at Washington, for ten cents. The corporation laws

¹ Already sufficiently watched.

of the several states are frequently separately published and distributed through the secretary of state. Reference should again be made to the platforms of the various political parties. President Wilson's views are expressed in his *New Freedom*, and Mr. Roosevelt's in numerous articles in the "Outlook" during the campaign of 1912.

The following are excellent authorities on the trust question: JENKS, J. W., *Trust Problem*; MEADE, E. S., *Trust Finance*; RIPLEY, W. Z., *Trusts, Pools, and Combinations*; CLARK, J. B., *Control of Trusts*; WALKER, A. H., *History of the Sherman Anti-Trust Law* (1910); Department of Justice, *Federal Anti-Trust Decisions* (1907).

Topics:

The Study of Some Local Corporation.

The Blue Sky Law.

Enforcement of Sherman Anti-Trust Act under President Taft.

President Wilson's Trust Policy.

Mr. Roosevelt's Views Concerning Trusts.

The New Trust Legislation.

CHAPTER XXXVI

THE CONTROL AND OWNERSHIP OF PUBLIC UTILITIES

RAILWAY, telephone and telegraph, water, gas, electric light and power, express, pipe-line, and street railway companies, presenting somewhat different problems from monopolies in general, are usually grouped together as public utilities. More than any other class of corporations they depend on special privileges conferred by the community. A railroad company, in order to build its line, must receive from the state a portion of the state's right of eminent domain; that is, the right by which a state or city may take land for public purposes, paying for it a price to be determined by a jury. Without this right the acquisition of its right of way could be held up by cross-grained or greedy property owners. The same is true of telephone, telegraph, power, and pipe-line companies. Within municipalities, public utility corporations must have the right to lay their wires, rails, or pipes on, above, or under public streets or highways. These special privileges which the state or municipality gives to public service corporations are known as "franchises."

Railroad-

There is an enormous amount of capital invested in the right of way, stations, terminals, and rolling stock of a railroad. After these permanent investments have been made, the volume of business may be increased very greatly without additional capital outlay. Indeed, the cost of moving a unit of the traffic ¹ may actually decrease

¹ The cost of moving one ton one mile is the usual unit employed by railroads.

as the volume of business grows. This brings it to pass that a railroad may well afford to carry part of its traffic at a rate which somewhat more than pays operating expenses, although entirely insufficient to pay the interest on the permanent capital investment. This has given a peculiarly bitter character to railroad competition. Rather than allow a competitor to get the business, a road can afford to take it for any price above the mere cost of carrying it. This has led to open rate wars and to private agreements with shippers, by which the latter secured lower rates or rebates. This situation tended to favor the very large shippers as against the smaller ones, because it was the large shippers whose business was most desirable. In non-competitive territory, the railroad, having an absolute monopoly, put its charges high enough to make up for the low charges made elsewhere. As almost all local traffic is non-competitive, it meant in general enormously high local rates and fairly low through rates. Between different commodities, as between different shippers and shipping points, the railroads have followed the principle of charging "all the traffic will bear." On each article the maximum rate which would not prevent people from shipping that particular article has been charged. The result has been relatively low rates on cheap, bulky articles and high rates on more expensive goods. From the point of view of securing the maximum use of our railways, this has probably been a wise policy, although it seems at first sight unfair.

The first charters granted to railroad corporations were very liberal in their terms. Frequently they were granted for indefinite periods, so that they could not be revoked or amended. As time went on, however, the states grew stricter with regard to railroad charters. They

**State control over
railroads**

**The first
state rail-
road com-
mission**

are now usually issued under general laws, which frequently provide that the state railroad or public utility commission must give a certificate of public necessity before the charter can be granted. In most cases no increase in the capital stock can be made, except with its approval. The idea of a state commission to exercise general supervising power over railroads early suggested itself. Rhode Island provided for such a commission in 1839, Connecticut in 1853, New York in 1855, and Maine in 1858. In 1867, however, the only railroad commissions existing were those of Connecticut and Maine. With the creation of a railroad commission by Ohio in that year, the modern movement for the state regulation of railroads began. There are now forty-four such commissions. The early commissions had in general merely advisory powers. The recent increase in number has been accompanied by an even greater increase in their mandatory powers. They generally have the power to regulate rates and to determine the character of the service that is to be rendered and the propriety of issues of stocks and bonds. The tendency in recent years has been to extend their powers to other public utilities, and a large number of them are now known as "public utility commissions." Their power of fixing rates is limited to strictly intrastate rates. The power of the state railroad commission is further limited by the fact that the rate must be reasonable. Both the federal and the state courts have interpreted the clauses of the federal and state constitutions, which provide that no one shall be deprived of property without due process of law, to mean that rates cannot be fixed at so low a point as to become confiscatory of the property of the corporation.

The United States first took effective steps toward the control of interstate railroad rates by the passage of the

Interstate Commerce Act, which was signed by the President, March 4, 1887. Just a month before, Congress had created the Interstate Commerce Commission as a bureau of the Interior Department. In 1889 it became an independent board reporting directly to Congress. It now consists of seven members, appointed by the President for a term of seven years. No more than four members can belong to the same political party. Each commissioner receives a salary of \$10,000 a year. The principal duty of the commission has been the enforcement of the Interstate Commerce Act above referred to. This act, as subsequently amended, provides that rates of all interstate carriers (this now embraces pipe-line, telephone, telegraph, sleeping-car, and express companies) must be reasonable, and forbids discrimination against persons, concerns, localities, or kinds of traffic. Each carrier is required to print its schedule of rates, and besides supplying copies to the commission, to post two copies in each of its stations or offices. No deviation from these published rates is allowed. No greater proportional charge for a long distance than for a shorter distance can be made except with the permission of the commission.

The commission was given power to prescribe a uniform system of accounts for all interstate carriers. It was not originally given any power to fix rates, but since it had the power to order violations of the reasonable rate clause to cease, it assumed the right to fix what were reasonable rates, but was halted by the Supreme Court. By an act of 1906 it was authorized to fix rates when a case came before the commission on the complaint of an aggrieved party. In 1910 it was given power to fix maximum rates on its own motion, and to suspend, pending a hearing, any new schedule filed with it. Heavy penalties are established for persons or corporations guilty of making

discriminations. A fine of \$5000 a day may be collected from any road for violating a rate-fixing order of the commission. In 1913 the commission was given authority to make a complete physical valuation of all carriers, subject to the Interstate Commerce Act. This will greatly help in fixing reasonable rates, as the enormous overcapitalization of the corporations misleads the commission and the public as to what rates they should fairly be allowed to charge. The commission has earned the confidence of the people. While hampered for years by inadequate powers, it succeeded in greatly reducing the abuses of which we have spoken. It has, especially since 1910, held a steady but moderate hand over the railways of the country.

Municipal franchises

We now come to the consideration of those utilities which make use of the streets of municipalities. Power to grant such franchises is possessed by every city subject to the limitations of its charter or of the laws of the state. In the early days they were granted for very long terms, or even without any limit, and made small provision for the protection of the people against overcharging and bad service. These franchises are very valuable, and have been frequently secured by corrupting the city council. Every attempt to limit the privileges or rights of public utility corporations has been met in the same way. Privately managed public utilities have therefore been a very potent cause of that municipal corruption of which we have spoken in previous chapters.

A device which it was once thought would help to prevent corruption was that of requiring proposed franchises to be advertised and awarded to that corporation which would pay the largest proportion of its receipts to the city. It has been found impossible, however, to get any effective competition in such bidding. It was also

thought wise to require franchise holders to pay an increasing share of their receipts to the city during the term of franchises. It gradually came to be the practice to insert in their franchises a provision that the city might take over the property of the corporation at the termination of the franchise, at its physical valuation. If the city, however, desired to purchase the plant of the public utility corporation during the term of its franchise, it had to pay the value of the franchise as well as of the physical property of the concern. The last step has been the rather extensive adoption of "indeterminate franchises," under which the city may acquire the utility at any time at its mere physical value. This power of acquisition has proved a most effective deterrent to bad conduct on the part of the corporation. On the other hand, if the utility corporation gives satisfaction to the people, it can continue indefinitely in operation, without the necessity of renewing its franchise. Some authorities on franchises now advocate a final limit even on these franchises.

The attempt on the part of municipalities to control the rates and service of the utilities to which they have granted franchises has been beset with many difficulties. In the first place there have been the corrupt methods employed by the utility corporations to prevent any action on the part of the municipalities. Where this obstacle has been overcome by an aroused public opinion, the utility corporations have frequently been able to block action by an appeal to the courts.¹ On the whole,

**Regulation
of municipal
public utilities**

¹ We have already seen that the rates fixed by public authority must not be confiscatory. To prove that the rate is not confiscatory requires a vast deal of information. On one side of the problem is the financial condition of the corporation itself. It usually has an amount of stock and bonds out of all proportion to the actual investment. The usual method of procedure has been for the persons who obtained the franchise to sell bonds to an amount sufficient to build the utility, and then to distribute among

municipal regulation of public utility corporations has proved a failure. New York, California, Massachusetts, Wisconsin, and several other states have given to public utility commissions the power to regulate utilities within municipalities. These state commissions have the machinery and power necessary to obtain the facts upon which the fixing of rates must be based.

**Municipal
ownership**

The ownership of public utilities by the federal or state governments has, with the single exception of the post office, not yet passed the stage of academic discussion. Municipal ownership and operation of public utilities, however, is in many instances already an accomplished fact, and each year sees progress in this direction. The case for municipal ownership is somewhat stronger than is that for other forms of government ownership, because municipal utilities always derive a large part of their income from the use of a portion of the public property — the streets. Furthermore, the city is a subordinate unit of government possessed of many of the characteristics of a private corporation. It already conducts a number of enterprises which are very hard to distinguish in their nature from the public utilities with which we are dealing. The history of municipalities is a story of steady expan-

themselves for sale to the investing public a large amount of stock. Upon the total of their stock and bond issues they have demanded the right to earn a fairly high rate of income. No municipality has ever had any control over the issuance of stocks and bonds, and only in the case of the few carefully drawn franchises have they had the power to investigate the books of the corporation to find out its actual financial condition. On the other side of the problem is the great plant of the public utility. To an increased degree, public utilities are supplied by great corporations which operate in many cities. An electric light company, for example, may draw its power from a source several hundred miles distant. To determine the value of the plant of such a corporation is, simply because of the expense involved, beyond the power of any except very large cities. With these difficulties in the way of obtaining the knowledge necessary to justify the reduction of rates, it is no wonder that the public utility corporations have been able to block regulation in the courts.

sion in the number of activities undertaken on behalf of their citizens. It is only a short time ago that roads were frequently private enterprises earning tolls. Sewers were for some time built by private capitalists who derived an income from the charges they made for sewer service. There is little difference in the kind of activity involved in supplying sewers, streets, libraries, schools, and police protection, on the one hand, and gas, water, light, and street railway transportation on the other. The line has been drawn at the point where the possibility of profit to some individual appears. European cities have not drawn any such line, and they look with contempt on the financial policy which gives the city all the burdensome tasks and denies it all the income-producing enterprises. We have ourselves broken over the line to a considerable extent. Every large city in the United States except San Francisco owns its water supply; a great number, especially of the medium-sized and small cities, operate electric-light plants; a few operate gas plants; while San Francisco carries on a successful and popular street railway.

It may be laid down as a general principle that public ownership is to be thought of only in the case of a monopolized industry which has passed beyond the experimental stage, and with regard to which regulation has failed. Government officers are slow to try the experiments and assume the risks which are essential to the development of a new industry.¹ The supplying of gas, water, electric light and power, transportation, and telephone communications has long since passed the experimental stage. Barring revolutionary changes comparable to the discovery of the telephone, which no one

**When a
utility is ripe
for public
ownership**

¹ There is probably, even in an established industry, some loss in efficiency and progressiveness, because there is not the stimulus of the great personal rewards which inspire the energy of the employees of a private enterprise.

can foresee, the improvements of the future will be along definite lines of progress already laid down.

ASSETS

Cost of Road and Equipment	\$5,042,331.00
General Expenditures, Exhibit A.	285,747.71
Cash and Securities in City Treasury, Exhibit B	1,645,790.24
Cash	\$1,231,789.04
Bonds, Exhibit B 1	414,601.20
Other Current Assets, Exhibit C	21,889.05
	<u>\$6,995,758.00</u>

LIABILITIES

Funded Debt, Exhibit D	\$5,475,000.00
Contributions from Premiums on Bonds	26,000.38
Contributions from Taxes, Exhibit E	286,693.92
Current Liabilities, Exhibit F	364,629.92
Reserves	487,117.82
Depreciation	\$454,407.07
Compensation Insurance	27,045.42
Insurance on Cars	5,665.33
Obligatory Charter Reserve from Taxes	217,845.68
Surplus	138,470.28
Net Profit to June 30, 1914	\$105,306.18
Profit, yr. ended June 30, '15	82,135.30
	<u>\$187,441.48</u>
Less Contribution to Gen'l Fund	48,971.20
	<u>\$6,995,758.00</u>

Balance sheet of the San Francisco municipal street railway for the year 1914-15, showing the profits of one public utility as operated under municipal ownership.

There can be no doubt that these services are best supplied by a monopoly. Competition means waste of capital in needlessly duplicated works, and in the case of the telephone positive inconvenience and added expense to the

user. The one question which remains to be settled is the practicability of regulation. In some places it has failed because it was too lax and inefficient, because of corruption, or because of the inherent difficulties in the way of municipal regulation. It may fail, too, by too severely cutting off all chances of profit and thereby driving private capital out of public utilities. It may fail because the overcapitalized condition of a utility corporation will not admit of its charging rates low enough to be fair to the public. Whenever these conditions exist, municipal ownership and operation become a feasible alternative. Furthermore, social considerations are sometimes of the first importance and municipal ownership may be justified on them alone. This is peculiarly true in the case of water supply, where the protection of public health and safety by an ample and pure supply is the most important consideration involved. In the case of the other utilities there undoubtedly is an increasing tendency to regard their services as necessities of life. Sometimes, also, a complete absence of private enterprise because of the great capital expenditure involved or the small prospect of profit may warrant public ownership where it would otherwise be undesirable. From the above we may deduce another general principle, that each case of proposed municipal ownership must be decided on its own merits, by applying to it the tests just laid down.

The success of the municipal ownership and operation of public utilities has been bitterly debated and is still questioned by a great number of very intelligent people. A few years ago the National Civic Federation appointed a committee, consisting half of disinterested friends and half of opponents of municipal ownership professionally identified with private plants, to investigate the subject in this country and Great Britain. They had the help of a

**The success
of municipal
ownership
and opera-
tion of pub-
lic utilities**

corps of experts in gathering the facts, and on the basis of these facts each portion of the committee reached a diametrically opposite conclusion. This well serves to indicate the difficulty of answering the general question, "Has municipal ownership succeeded?" Each case must be considered separately, in view of the local conditions surrounding it. It may be safely assumed to be true that municipal operation is slightly less efficient in details than is private operation. Many municipally owned utilities, however, are operated with high efficiency, and it is to be believed that the general average of efficiency will improve as time goes on. There is, furthermore, in a municipally owned industry no chance for stock watering, overcapitalization, and other shady dealings in finance which have brought so many of our privately owned utilities to ruin.

SUGGESTIONS FOR FURTHER STUDY

The same difficulty of finding suitable references on the national and state aspects of the subject for young students exists here as in the previous chapter. BEARD, pp. 379-382, 727-731, and *Readings*, pp. 352-358, 609-617, touch upon it. ORTH, S. P., *Readings on the Relation of Government to Property and Industry*, pp. 221-412, contains a very valuable collection of material, especially on regulatory commissions. See also TAUSSIG, F. W., *Principles of Economics*, vol. i, pp. 218-224; vol. ii, pp. 363-418. THELEN, MAX, *Report on Leading Railroad and Public Service Commissions* (published by California Railroad Commission, 1911), is a valuable compilation. *The Encyclopedia of American Government* and the *American Year Book* give much interesting information.

Teachers may profitably refer to RIPLEY, W. Z., *Railroads, Rates and Regulations*; JOHNSON, E. R., *American Railway Transportation*; DAGGETT, STUART, *Railroad Reorganization*; MEYER, B. H., *Railway Legislation in the United States* (1903); HAINES, H. D., *Problems in Railway Regulation*; VROOMAN, C. S., *American Railway Problems* (1910); and reports of the Interstate Commerce Commission.

On the municipal side there is an abundance of popular literature. Especially see BEARD, C. A., *American City Government*, pp. 190-

241. The following will also be found interesting: HOWE, F. C., *The City, the Hope of Democracy*, and *European Cities at Work*. A conservative view is taken by LOWELL, A. L., *Government of England*, vol. ii, pp. 233-267. See also DARWIN, L., *Municipal Ownership*.

For teachers: see WILCOX, D. F., *Municipal Franchises*; KING, C. L., *The Regulation of Municipal Utilities*; National Civic Federation Report on *Municipal and Private Operation of Public Utilities*; *State Regulation of Public Utilities*, Annals of American Academy, vol. xliii, May, 1914; *Public Policies as to Municipal Utilities*, same, vol. lvii, January, 1915.

Topics:

Arguments pro and con on the government ownership of telegraphs, telephones, and railroads, or the municipal ownership of any of the municipal utilities, will help to make the work of the student interesting. The student may be assigned to study any of the public utilities conducted in your city.

Some other possible topics are: State *vs.* Local Regulation of Public Utilities; The Indeterminate Franchise, etc.

CHAPTER XXXVII

GOVERNMENT AND LABOR

The labor problem

THE labor problem in its modern sense came into existence only with the development of machinery and methods of factory production. Up to that time manufacturing industries had been carried on by independent artisans, usually in their own homes with the aid of a few apprentices. The master supplied all of the materials and tools necessary for the work. Every apprentice might reasonably hope to become a master workman and to maintain a shop of his own. Factory production, however, required the expending of very large sums of money in buildings and machinery, and it rapidly came to pass that the buildings and machinery were supplied by one class of men, while the labor was supplied by another. The workman came to be a mere hired servant dependent upon his wages for existence. It is easy to see that in this situation an individual workman was practically helpless against the owner of a factory. If he were dissatisfied with the work, he might of course quit his employment. The quitting, however, of a single employee would not cause the owner embarrassment. In any bargain, therefore, as to the rate of wages to be paid or the conditions of the work to be done, the employer had all the advantage.

Trade unions

To enable themselves to bargain on something more like terms of equality, the laboring men early began to form what are known as "trade unions." These are associations composed as nearly as may be of all employees in a given trade. The various local unions are united into large federated bodies to secure additional strength.

These unions require the payment of regular dues from their members, and sometimes become in this way possessed of considerable funds. The ultimate weapon of the unions in dealing with employers is the "strike," which is simply a concerted quitting of work by the members of the union. While the quitting of a single employee does not embarrass the employer, the sudden quitting of nearly all his men is a matter of the gravest consequence. The union, to express the matter in a different way, controls the supply of labor and is able to withhold it from the employer. It is thus in a position to bargain with him as to wages and the conditions of work. As a result of the activities of the unions, the position of working men has been greatly improved.

While the strike is the final resort of organized labor, it is only when the union is so well organized as to have a practical monopoly of the labor supply in a given industry that a simple strike will enable it to gain its point. Where unions have reached that degree of perfection, it is not usually necessary for them to strike at all, the mere threat being sufficient. It is worthy of note that the more powerful unions have become, the more conservative has become their attitude toward striking. In many strikes it is necessary for the union men to take some steps to prevent the non-union men from filling their places. This is usually done by "picketing." This means the posting of groups of union men at all the approaches to the establishment against which the strike is declared. The pickets sometimes merely argue with the non-union men who seek to go to work there. In other cases, however, they resort to intimidation and violence in order to prevent them. This is particularly likely to occur when strike-breakers have been imported from outside neighborhoods.

**Union
methods**

Besides the strike, unions have employed another great weapon, the "boycott." If they can prevent the use of non-union-made goods, they may force employers to employ only union men. Goods made in union establishments usually bear what is known as the "union label." The unions have endeavored to teach the public to insist on all goods bearing this label. No good union man will buy any kind of manufactured product without it. Lists of firms regarded by the unions as unfair to labor have been published in their papers and the public urged to refuse to patronize them. In the case of disputes with restaurants, bakeshops, and other retail establishments, the unions have frequently picketed these places against customers. Picketing in such instances is usually peaceful, but of course very annoying to the proprietor of the establishment.

In order to promote their control of the supply of labor, unions have in many instances limited the number of apprentices who might be taught a particular trade. The movement for shorter hours of labor has been due in part to its effect on the labor supply. In some instances unions have even limited the amount of work that a man can do each day; the question is often raised whether this is not contrary to the interests of society at large.

**Employers'
methods**

The first effort of employers, looking at them as a class, has been to prevent the formation of unions among their men. Failing in this, they have resisted the demands of the union by a variety of means. When business conditions permit, the employer will simply close his factory and wait for the means of the men to become exhausted. This is known as a "lockout." If the employer can wait long enough, this method is invariably successful. The men must return on his terms or seek work elsewhere. In many instances, however, the employer is not in a posi-

tion to wait. Unless he can supply the goods which his customers demand, he will lose their trade and perhaps forfeit large sums of money for failure to fill orders already accepted. Under these circumstances he will try to keep his establishment running despite the strikers. This means the employment of non-union men or "scabs," as the strikers call them. In recent years there has grown up a class of professional strike-breakers, who are not infrequently employed in such cases. They are usually bold adventurers who can stand the jeers and taunts of the strikers and retaliate in kind. Their employment almost always brings on furious industrial warfare, sometimes accompanied by great loss of life and property.

In these labor struggles the law is almost all on the side of the employer. Statutes against picketing have been passed in most of the states. The printing of lists of persons as "unfair," or otherwise conspiring to deprive them of trade and custom, is illegal, both by common law and state statutes.¹ The use of violence or intimidation upon a non-union man to prevent his taking the place of a striker is, of course, a criminal act in the eyes of the law. The courts have been disposed to protect the property of the employers against even indirect injury as a result of the strike. They have held that an employer has a property right in the free flow to his establishment of labor, goods, and customers. They will, therefore, issue an injunction against union men doing anything to interfere with this property right. Disobedience of the injunction is contempt of court. Contempt of court is punished, not by trial by jury, but by the judge alone. In event of continued disobedience

**Labor
struggles
and the law**

¹ The employers' "blacklist" is also under the ban of the law. This blacklist corresponds to the "boycott" practiced by employees and is a list circulated among employers of those men who have been active in union affairs, so that, losing one job, they cannot get another.

by large bodies of strikers, all the civil and military power of the state can be called on to enforce the injunction. The freedom of the courts in issuing injunctions in labor disputes has led to the belief on the part of the working class that the courts are hostile to their interests. The phrase "government by injunction" has been coined to describe the situation. Union men demand that contempt of court cases be tried by jury, and that the use of the injunction be prohibited in most labor disputes.

**Industrial
conciliation**

There is a third party to all disputes between unions and employers — the public, whose loss in any considerable strike is very great. This is especially true where the strike involves some necessity of modern life, such as coal, railroads, or street railways in large cities. Unfortunately neither workmen nor employers are particularly ready to recognize the rights of the public. If there is ever to be any permanent, peaceful settlement of the labor problem, it can come only from recognition of the superior obligation which the members of every class owe to society as a whole. It is heroic to sacrifice your own interests to those of your associates. It is not heroic to sacrifice the interests of society in general to those of your nearer associates. The necessity to the community of a permanent and just settlement of labor disputes has led to numerous efforts to establish some regular system of conciliation. The parties to labor disputes have frequently settled them voluntarily by appointing arbitrators or mediators. Many agreements between unions and employers call for a submission of disputes to some body representative of both. These extra-legal methods of conciliation, however, do not reach all situations. In 1886 the states of Massachusetts and New York both provided for state boards of arbitration. These boards were to offer mediation in all strikes. They

had, however, no power to force a settlement. If both parties were not willing to accept their mediation, they could conduct an investigation and report the findings to the public. Several other states have adopted laws of a similar nature, but with the exception of Massachusetts and New York, these state boards have not had any very considerable success. In recent years an effort has been made to secure the adoption in some of our states of conciliation laws modeled on those of certain of the British colonies. These would necessitate the submission of every dispute to the board of conciliation before the strike could be called. While the decision of the board is not to be compulsory in the sense of its being absolutely binding on both parties, the strike or lockout ordered after the board had rendered an adverse decision would inevitably be weak for lack of public support.

A great many laws have been enacted concerning the construction, lighting, and sanitation of factories and the proper guarding of machinery. One of the most recent advances in this direction is the legislation of the United States with regard to the materials to be used in match making, which was one of the most unhealthful of all the industries in this country. We have now matches that may be harder to ignite than formerly, but we should be willing to make such a slight sacrifice for the sake of the health of those engaged in the industry. Women and children have been especially singled out for the protection of the law. The first effective law in this country limiting the hours of labor of women was one passed in Massachusetts in 1876, providing that no woman might be employed in a factory for more than ten hours a day. Since that time all but a few of the states, mostly in the South or such sparsely settled states as Nevada, New Mexico, and Wyoming, have adopted

**Factory
legislation**

some limit to the hours of labor for women and children.¹ California has gone farthest in this direction, fixing the hours that women may be employed at eight hours a day and forty-eight hours a week. A few states forbid night work by women in certain industries. They are excluded from work in mines in most mining states, and in saloons and in a variety of other situations considered detrimental to their health. Provisions are now made in several states for resting periods for women during the day. Employers are sometimes required to provide seats for women employees. We may thus conclude that a beginning has been made towards protecting women from the consequences of labor that might impair their health and their efficiency as mothers.

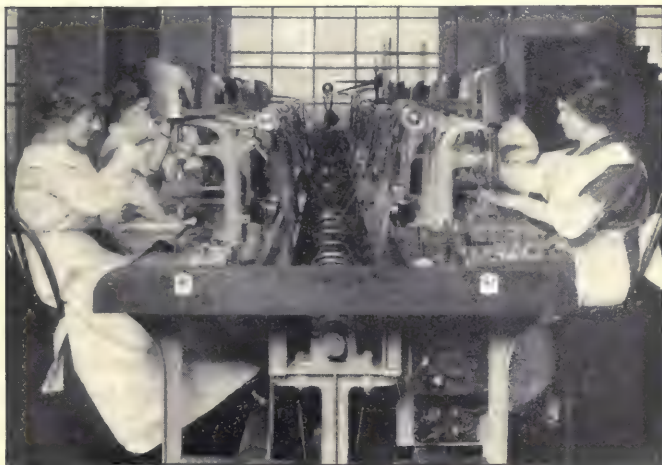
**Child-labor
legislation**

Child-labor legislation began in England in 1802, with the law limiting the hours of labor for pauper apprentices in cotton mills. This was followed by an act passed in 1819, which forbade the employment in cotton mills of children below the age of nine years, or for more than twelve hours. That this was an actual limitation on children's labor at that time indicates the barbarous conditions which had hitherto prevailed. Our child-labor laws in the United States have practically all been adopted since 1895. The age limit in most of the states is fourteen years, except in some of the Southern states, where it is frequently twelve years. In South Carolina, Arkansas, Mississippi, and Alabama children under twelve may be employed if it is for the purpose of supporting dependent parents. The tendency is now to raise the age limit to sixteen years, which has already been done in California and a few other states. Twenty-three states

¹ Two states have an eleven-hour provision; eight put the limit at ten hours a day or sixty hours a week; eleven, at ten hours a day or fifty-four to fifty-five hours a week; four have a nine-hour day, with a maximum of fifty-four hours a week.



The hospital room in the National Cash Register Company's plant at Dayton, Ohio.



A group of women employees in the factory of the National Cash Register Company, where emphasis is laid on the principle of "Safety First." Note the lowering of the machinery below the level of the work tables and the shades for protecting the eyes from particles thrown off by the wheels that operate the stamping machines.

prohibit night work for children in factories. In order to make such prohibition effective, it is necessary definitely to fix the hours between which children shall not be employed. In about one half of the twenty-three states referred to, this has not been done, with the result that their laws are not effective. Late hours are generally allowed in agricultural districts, and in such trades as those of newsboys and telegraph messengers. Most states limit the hours of labor of young persons who may be employed. Ten hours a day is the usual limit, although New York, Illinois, and several other states make it eight hours. An act of Congress approved September 1, 1916, forbids, under moderate penalties, the privileges of interstate commerce to the products of mines or quarries where children under sixteen are employed, and to the products of factories, canneries, etc., employing children under fourteen or children between fourteen and sixteen for more than eight hours a day, or more than six days a week, or before six in the morning or after seven at night.

During the last few years attention has been very strongly called to the low wages paid to women and children. This has been said to be a great cause of immorality, and there can be no doubt it has helped to reduce the physical standards of our people, by reason of the persistent underfeeding of these unfortunate women and children. These facts have given rise to a demand for the establishment of a minimum wage for women and children. Massachusetts took the lead in this matter in 1912. Several states in 1913 provided for commissions to investigate the subject with the object of providing a minimum wage. Boards employed to fix or recommend a minimum wage were provided for in Washington, Colorado, Oregon, California, Nebraska, Minnesota, and Wisconsin.¹

**Minimum
wage**

¹ Utah fixed a minimum wage for women and children by law, the amount being seventy-five cents a day for persons under eighteen, ninety cents for

**Workmen's
compensa-
tion**

Many modern industries as conducted in the United States are very productive of injury to those engaged in them. It is impossible to build a skyscraper, dig a subway, or operate a railroad without loss of life. Railroads in the United States kill or injure every year one employee for each mile of track they operate. The law with regard to the liability of employers for such injuries until recently was generally and in many states still remains as it stood in the era of household industry. Workmen could not recover damages from employers if the injuries were caused by the negligence of a fellow-servant, on the supposition that he was better able to guard against such negligence than an employer. This was sheer absurdity in modern industries, where the injured person may not even have known of the existence of the "fellow-servant." Furthermore, under the old law, the employee was supposed to assume the risk of all apparent defects in the machinery, on the theory that he could take the job or not, as he pleased. Under modern conditions of industry most people have to take the jobs they can get. The third obstacle to the employees' getting any damages from the employers was the doctrine of "contributory negligence." The conduct of the switchmen in the railway yard or the structural iron worker on the top of the skyscraper may appear negligent to a ground-walking judge. Yet such "negligence" is expected by the employer, because it is essential to the carrying on of the work with proper speed.

Practically every other country in the world had recognized the injustice of such rules and had established

older persons while learning a business, and \$1.25 for experienced women workers. The method of fixing a minimum wage by legislative enactment must necessarily be arbitrary. What may be a satisfactory minimum wage in one year, under a given condition with regard to prices, will be entirely insufficient or excessively high the next. The alternative is to intrust the task to an administrative commission.

some system by which workmen injured in the course of industry might be compensated in some degree, before we began to see the light in the United States. The first step taken in this country was the abolition by several states of those obstacles to the recovery of damages of which we have spoken above. The second step, which has now been taken in Wisconsin, California, and a few other states, is that of providing that the employer shall compensate the workman in every case of accidental injury. The amount of compensation is fixed somewhat below what might have been recovered under the old law in a court proceeding. Some of these laws require the employees to contribute a portion of their wages to the funds from which a part of the compensation is paid. Employers, except a few of the greater corporations, insure against liability to pay compensation. In some states, as California, the state has gone into the insurance business to make certain that the rates for such insurance shall not be excessive.

A trade union depends for its success upon obtaining a practical monopoly of the labor supply within its field. It can be made most effective in an industry where the supply of labor is capable of limitation, as in any industry requiring skill or preparation. Such practices as the limitation of apprentices or the work which a man can do are simply methods of enforcing a monopoly. Most unskilled laborers have been left outside the direct benefits of the trade-union movement. Many workmen have naturally therefore yearned for some more democratic expression of the interests of the working class. Many have found this in Socialism. This party has based its appeal in a large measure upon class consciousness. It has represented itself as a working-class movement, and besides its doctrine of the common ownership of the

**Socialism
and the
labor
problem**

instruments of production, it has stood for a large number of concrete reforms which would benefit laboring men. We need not be surprised, then, to find that a great number of working men are Socialists. Generally speaking, however, the men in the more skilled and more highly paid trades, where the unions are more thoroughly organized, are not Socialists.

Syndicalism

During the past few years a movement much more radical than even Socialism has made great progress. This is the Syndicalist movement. There are two phases of it which should be noted. First, it is a method of conflict. Instead of grouping men in accordance with the trade they practice, it groups together all men who are engaged in the various processes necessary to the production of a completed commodity. Thus all men engaged in the production of cotton goods, including the teamsters and engineers, form a single "industrial" union. The organization thus formed proposes to fight the employer with a ferocity and a disregard of law heretofore unknown. Syndicalists frequently indulge in *sabotage*, which includes the destruction of the employer's property even when no strike is on. Syndicalism is the most violent expression of class discontent which has yet appeared. Its second phase, which is a theory of the proper organization of economic society, is of relatively little importance. Such Syndicalists as have any theory at all propose that each industry should be organized independently on a communistic basis.

Studies of the labor problem

The United States Department of Labor and Bureau of Labor Statistics collect and classify a vast amount of information concerning labor conditions. Similar work is carried on in most of the states by the commissioners of labor and other like officers, this work being frequently associated with the task of enforcing labor laws. Many

boards and commissions have been created by the states for the purpose of investigating various phases of the labor problem, and a great deal of valuable information has been gathered by them. The greatest enterprises of this sort, however, have been those of the federal government. In 1898 an industrial commission was created by an act of Congress, which reported in 1901 the result of its investigations. A large part of the seventy-two-volume report of the immigration commission created in 1907 relates to industrial conditions. An industrial-relations commission was created by the act of 1913, and engaged in an extensive investigation of the industrial affairs of the country. It is to be hoped that some genius will be developed, capable of digesting and applying in a statesmanlike way the vast stores of information which are now being accumulated. It is a very good sign indeed that we are awakening to a real interest in this fundamental question of American life.

SUGGESTIONS FOR FURTHER STUDY

BEARD, pp. 732-742, is especially good on this subject. See also *Readings*, pp. 617-625. The best single book on the subject which is of reasonable compass is CARLTON, F. T., *History and Problems of Organized Labor*. ORTH, S. P., *Readings on the Relation of Government to Property and Industry*, pp. 413-497, will be very valuable. See also TAUSSIG, F. W., *Principles of Economics*, vol. ii, pp. 261-322. WRIGHT, CARROLL D., *The Industrial Evolution of the United States* (particularly pp. 231-320), is a valuable book for class reference. Somewhat more recent and practically indispensable is BOGART, E. L., *The Economic History of the United States* (2d edition, 1913), pp. 472-507. MITCHELL, JOHN, *Organized Labor*, gives a popular statement of the labor question and the organization and methods of trade unions. The Child Labor Bulletins and the American Association for Labor Legislation's "Legislative Review" (especially summary of the child labor laws, 1910) are useful.

The reports of the bureaus of labor of the several states and of their industrial accident boards, of the United States Department

of Labor, Bureau of Labor Statistics, of the industrial commission of 1898, and of the commission of industrial relations of 1913, are of course the most important sources of information. They are, however, rather beyond the ability of young students. Teachers may likewise profitably refer to ADAMS AND SUMNER, *Labor Problems*; ELY, R. T., *The Labor Movement in America*; and COMMONS, J. R., *Trade Unionism and Labor Problems*. GILMAN, N. P., *Methods of Industrial Peace*; CLARK, V. S., *The Labor Movement in Australasia*; HUTCHINS AND HARRISON, *A History of Factory Legislation* (1907). WEBB, SIDNEY AND BEATRICE, *Industrial Democracy* (1902) and *History of Trade Unionism* (1911), are the best works on the labor movement in England.

Topics:

Discussions, in which several pupils may take part on each side, of the following questions: "*Resolved*, That labor unions have been a benefit to the United States as a whole"; "*Resolved*, That the open-shop system promotes the best interests of any community"; "*Resolved*, That the New Zealand form of compulsory arbitration or something similar should be adopted in the United States," will promote interest. Reports may also be required on the laws of your own state with regard to picketing, child labor, hours of labor, minimum wage, workmen's compensation, etc.

CHAPTER XXXVIII

IMMIGRATION

**The problem
of immi-
gration**

VERY closely allied to the subject of the last chapter is that of immigration. It is through immigration that the millions of strong arms necessary for the development of our vast natural resources have come. On the other hand immigration has brought to this country many persons unfit in body and mind to become good citizens. Grave questions have arisen as to our ability to assimilate the races which have been arriving in greatest numbers during the last ten years, and as to what will be the effect upon our race if we do assimilate them. Serious economic problems have grown out of the exploitation of unskilled immigrant labor by certain of our great monopolies. Strikes and other manifestations of social unrest have increased in frequency because of this situation. We may well stop to consider the subject of immigration, and our means for handling it.

**Volume of
immigration**

In 1820, when the statistics of immigration first began to be regularly recorded, the population of the United States was homogeneously English. Between 1820 and 1910, 27,918,000 immigrants came to the United States. More than a million have arrived in each of several recent years. The population of the country has, however, increased to such an extent that a million immigrants to-day is a smaller proportion of our total population than were the 310,000 people who came to our shores in 1850. About one fourth of the immigrants now coming to America return to Europe after a few years of residence. The proportion of foreign-born white persons to the total

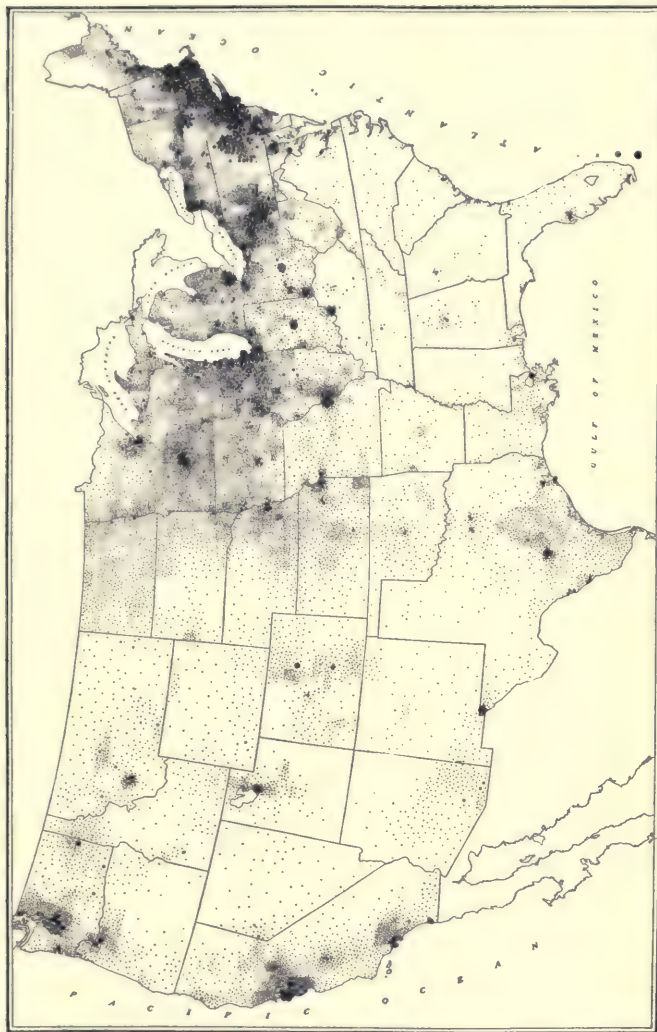
population of the United States was slightly lower in 1910 than in 1870. The proportion of those born in this country of foreign or mixed parentage showed a considerable increase.¹

**Races in
American
immigration**

The history of immigration since 1820 naturally falls into three periods. First came the Irish period, extending from 1820 to 1855. It reached its climax between 1846 and 1851, during which years 1,200,000 persons arrived from Ireland. The second or Germanic period extends from 1855 to 1890. During this time about 4,500,000 Germans came to the United States. The third period may be called the Slavic-Italian-Hebrew period. It extends from 1890 to the present day. The Italians, of whom upwards of three millions have come to the United States, are mostly from southern Italy and Sicily. An even larger number of Slavic peoples have come from southeastern Europe. A vast number of Jews, from 50,000 to 150,000 a year, have been driven from Russia by the persecutions in that country. If we turn back through the files of the newspapers and magazines we shall find that each new set of immigrants has been received with suspicion. It is undeniable, however, that the assimilation of recent immigrants is more difficult than that of their Irish and German predecessors. It is equally undeniable that on the score of illiteracy, crimi-

¹ PERCENTAGE OF FOREIGN-BORN WHITE PERSONS, ETC., TO THE TOTAL WHITE POPULATION

	1910	1900	1890	1880	1870
Foreign-born	16.3	15.3	16.6	15.1	16.4
Native-born	83.7	84.7	83.4	84.9	83.6
Foreign parentage . . .	15.8	15.9	14.7	14.7	12.4
Mixed parentage . . .	7.3	7.5	6.2	4.4	3.4



Map showing the distribution of inhabitants of foreign descent in the United States in 1910. (From E. A. Ross's *The Old World in the New*. Used by arrangement with the author and The Century Company, publishers.)

Copyright, 1914, by The Century Company

nality, etc., the new immigration compares unfavorably with the old.

One of the most unfortunate aspects of immigration at the present time is the congestion of immigrants in the large cities. Still worse, this foreign element tends to settle together in certain districts of each city. It is natural for them to seek the companionship of those of their own race and language. This race grouping has had, however, a very bad effect upon our city governments, by preventing the formation of a general municipal public opinion. Unless the whole population of a city has something like a common ideal with regard to public problems, it is very difficult to get any righteous decision of public questions out of it.

**Congestion
of immi-
gration**

Various efforts have been made to secure the distribution of our immigrants throughout the country. Men who would be of great value in an agricultural region where labor is scarce, are only a menace in the crowded slums where there is already a surplus of labor. Several of our states have organized immigration commissions, the purpose of which is to look after the physical and mental well-being of the immigrant. They see that he is not cheated, that he is properly housed, and if possible they send him where his labor is in demand. All that can be done, however, in the way of distributing the immigrants is to explain to them the advantages of the location to which you wish them to go. Under our Constitution and laws, they cannot be made to go unless they wish to. It is true that while the compactness with which immigrants are massed in city slums tends to retard assimilation, the forces that make for assimilation are far greater in the city than in the country. Schools, lectures, newspapers, politics, and the rush and struggle of everyday life Americanizes the immigrant with great rapidity.

Distribution

Immigrant families in the comparative isolation of farm life retain for a much longer time their racial characteristics.

**Immigration
legislation**

During the colonial period nothing was done in the way of putting legal restrictions on immigration. Every one who came was welcome. Indeed, so long and dangerous was the passage from Europe to America that only the strong and brave cared to undertake it. Further, great as was the promise of the New World to those who could stand hardship, there was little about it to attract any others. The result was that the early immigration to this country was restricted by natural causes to those best fitted for the conditions of our life. It was not until 1819 that the United States passed its first law relative to immigration. This act made some improvement in the conditions of steerage passage and provided for the keeping of statistics of immigration. About the same time the states of the Atlantic seaboard began to notice that the stream of immigrants brought with it numerous paupers, criminals, insane, and otherwise undesirable persons, likely to become a source of expense and trouble to the community. To meet this situation the states enacted laws providing for a small tax to be paid by the ship-owner on each immigrant brought in and requiring him to give bond that they would not become public charges within a certain time. In spite of the agitation of the Know-nothing or Anti-Foreign party, these laws remained practically all the legislation with regard to immigration down to 1882. In 1876 the Supreme Court of the United States, reversing its former decisions, held that under the commerce clause of the Constitution exclusive control over passenger as well as freight traffic belonged to Congress.¹ The act of 1882, which was adopted to care for

¹92 U. S. 259.

the situation created by this decision, laid a tax of fifty cents on each immigrant and excluded from admission convicts (except political offenders), lunatics, idiots, and persons likely to become a public charge.

The act of 1891 provided the present machinery of enforcement for our immigration laws by creating the position of Superintendent, since changed to Commissioner-general, of Immigration, and putting under him a full corps of officers to carry out the law. This act also established the patrol of the Mexican and Canadian borders. Since 1907 the head tax has been four dollars. Under the law of this latter year, the following classes of persons are excluded: (1) Idiots, imbeciles, and feeble-minded persons; (2) epileptics; (3) insane persons; (4) paupers; (5) persons likely to become public charges; (6) persons afflicted with tuberculosis or with any loathsome or contagious disease; (7) persons who are otherwise physically or mentally deficient in such a way as to affect their earning capacity; (8) convicts, except those convicted of purely political offenses; (9) polygamists; (10) anarchists; (11) prostitutes or those bringing in prostitutes; (12) contract laborers (this does not include professional people, skilled laborers, or domestic servants); (13) assisted persons, unless they can show that they do not belong to any excluded class; (14) children under the age of sixteen years unaccompanied by their parents, at the discretion of the Secretary of the Department of Labor.

**Present
status of
immigration
laws**

The Chinese began coming to California with the gold rush in 1849. They were at first welcomed by the early settlers of the country, but when their numbers increased with great rapidity and they began to compete successfully with the whites in mining and farming and as domestic servants, the sentiment of the white population

**Oriental
exclusion**

turned against them. In 1882, as a result of California agitation, Congress passed an act prohibiting the immigration of Chinese laborers for a period of ten years. This act was amended in 1884, and still stricter laws have been passed at intervals since. The result of these acts is the exclusion of Chinese except merchants, students, and travelers. Under the operation of these laws, the number of Chinese in the United States has steadily decreased, until they no longer constitute any serious problem, even on the Pacific Coast.

About 1905, however, increasing immigration from Japan aroused on the Pacific Coast a similar feeling to that which had been earlier aroused by the Chinese immigrants. The United States met this situation by securing from the Japanese government a "gentlemen's agreement," by which Japan agreed not to issue passports to continental United States, except to non-laborers, or such laborers as had been in the United States before, or who came to join a parent, wife, or child, or to take an active control of farming enterprises in this country.¹ The presence of the Japanese, especially in California, has continued, however, to be a serious problem. In 1913, the state of California adopted a law forbidding the ownership of real estate by Japanese. The Japanese protested against this legislation as a violation of their treaty rights, and up to the date of the writing of this book the matter had not been settled.

The last phase of Oriental immigration has been that from British India. Large numbers of Hindus have entered the United States in the past four or five years, by way of the Pacific Coast, and their coming has aroused

¹ The President, under authority given by Congress, has refused admission to continental United States to Japanese or Korean laborers from Canada, Mexico, and Hawaii.

intense opposition among a portion of the native population. Very many of them have been excluded, however, under one pretext or another, by the immigration officers at San Francisco and other ports.

For the enforcement of the immigration laws, every shipowner is required to furnish certain information with regard to each immigrant passenger. These data furnish the basis for the work of the inspector who meets the immigrants on landing. Upwards of two thirds of our immigration comes in through the New York gateway, and is dealt with at the immigration station on Ellis Island. Here the immigrants are first obliged to pass in single file, twenty feet apart, between medical examiners, who mark for further examination all those who are not obviously healthy. Each immigrant is then obliged to answer a series of questions bearing upon his eligibility.¹ If he passes through this examination satisfactorily, the eyes of the immigrant are examined. If certain diseases are discovered, especially trachoma, he will be excluded. Those who have satisfactorily passed the tests up to this point are then ready for admission, and are sent to New York, or delivered to the railroad in accordance with their announced destination. Of the remainder, those as to whose case any doubt exists are examined by an inquiry board. If this board decides against them, they may appeal to the Commissioner-general of Immigration or to the courts. Those who are denied admittance are deported at the expense of the steamship company which

Inspection
of immi-
grants

¹ Under the provision excluding those who are likely to become a public charge, the Bureau of Immigration has considerable discretion. If a person is over fifty years of age, a single woman, a child, or otherwise of such physical or mental weakness as to make it problematical whether he can earn his living or not, he is likely to be rejected unless he is coming to join members of his family in this country, who will be responsible for his support. If an immigrant has less than \$50 in money in his possession, he is also made the subject of particular scrutiny.

brought them over. In 1912-13, 1,197,892 were admitted and 19,938 excluded. It is thus apparent that our present immigration laws are not of a very restrictive character, although they do tend to keep out those most obviously unfitted for American citizenship.

**Further pro-
posed re-
striction of
immigration**

Further restriction of immigration has been widely advocated. Many persons see in the vast horde of Europeans who seek our shores each year a menace of tremendous proportions. Among the methods of restriction which have been proposed, the one most favored is the "literacy test," *i.e.* that each immigrant should be able to read and write some language. The effect would be to exclude large numbers of farm laborers who come from eastern and southeastern Europe. Congress has three times passed bills embodying the literacy test, which have been vetoed by Presidents Cleveland, Taft, and Wilson, respectively. The chief objection to it is that it would exclude the rugged, healthy farm laborers, whose strong arms are needed in the development of our vast stretches of vacant land, while it would admit the less sturdy element from the cities. Another method suggested for restricting immigration has been a large head tax. The objection to this is that it is entirely unfair in its discrimination. What we need in our immigrants is good health and vigor, rather than the possession of money. Still a third method of restriction provides for admitting each year no more immigrants of any nationality than will equal ten per cent of the total number of persons of that nationality then in the United States. Five thousand would be allowed of each nationality irrespective of its numbers in this country. This measure would greatly reduce the number of Slavs, Italians, and Hebrews, the races which are now coming to this country in greatest numbers. It is, of course, as purely arbitrary



Judging the mentality of an immigrant boy at Ellis Island by the time it takes him to put blocks of different shapes in the corresponding compartments of the form board.



The main waiting room at Ellis Island, decorated for the Christmas holidays. Immigrants are separated by the partitions into different lots for facilitating the work of inspection.



a method of restricting immigration as either of the others mentioned and would present serious difficulties in administration.

The real cause of immigration has been the better opportunities for making a living in this country. The advantage of the United States in this respect was of course much greater up to forty years ago than it is now. While, however, the advantage of coming to America has been decreasing, the difficulty of coming has been diminished to a far greater extent. Six days in an ocean steamship in comfortable steerage quarters has replaced the horrors of the old-time immigrant ship. At the same time information concerning America has been widely distributed throughout Europe. The steamship companies have been very persistent in their advertising, and have held out glowing promises of congenial work at high wages in our country. Scarcely a village of Europe is so small that it has not its steamship agent. What the immigrant finds when he reaches this country is frequently disappointing. Many of them come only with the intention of remaining a comparatively short time. Others, discouraged, are glad to return, especially in the years when times are hard in this country. Immigrants will continue to come to the United States, unless they are prohibited by law, until there is no longer any advantage in coming. While we cannot regard our present immigration with complacency, the majority of the immigrants, of whatever race, make good citizens. We have already taken steps excluding those races which are quite unasimilable, such as the Chinese, Japanese, and Hindu. In the absence of a just and practical means of restricting immigration from Europe, we must try in every way to Americanize the newcomers. To this end we must treat them sympathetically. Wholesale condemnation of im-

Future
immigration

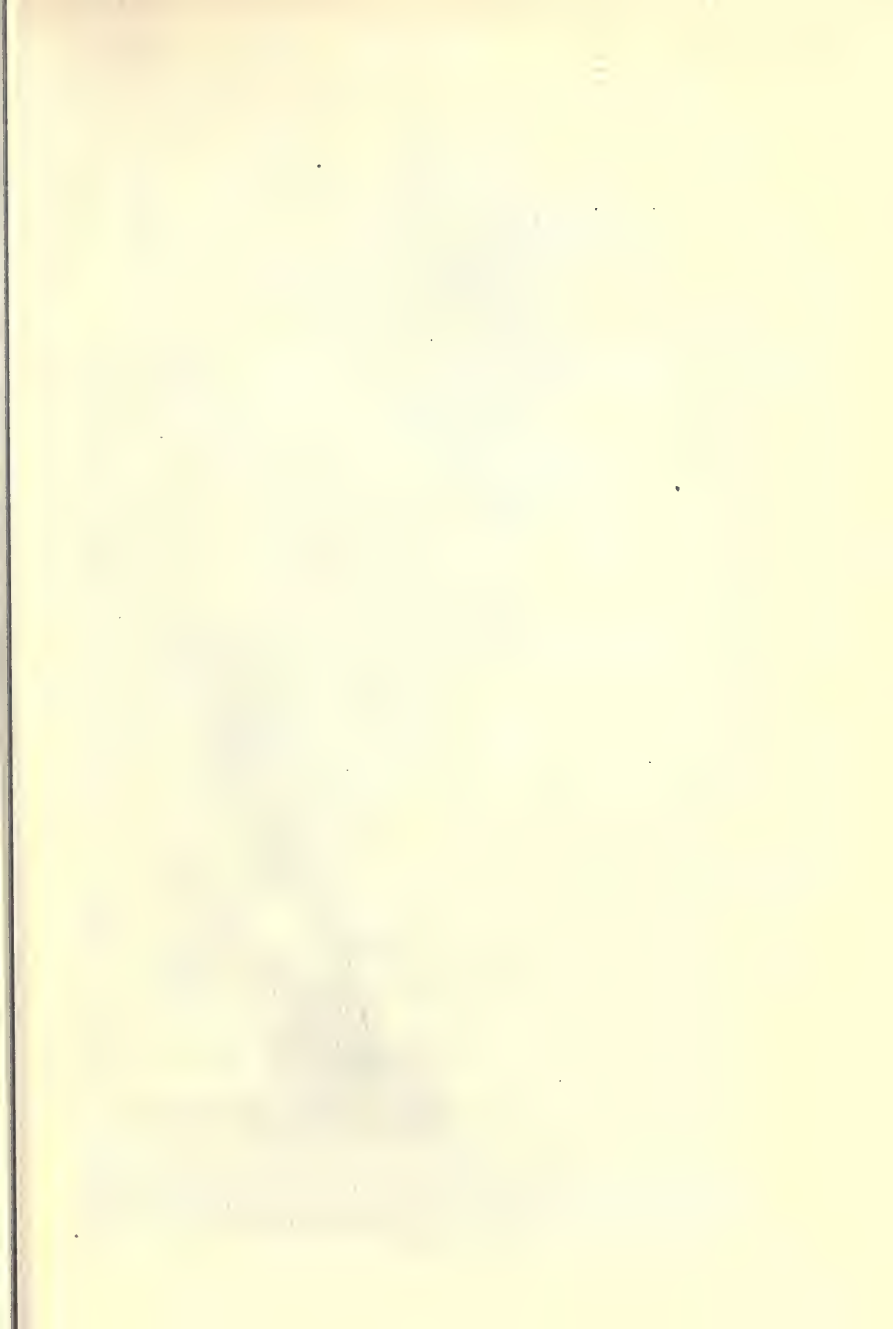
migrants is unworthy of a people all of whose ancestors were more or less recent immigrants. We must create and heartily support organizations or governmental departments to distribute and care for immigrants. We should look upon them as responsibilities of the first order. Their future usefulness in large measure depends upon the treatment they receive and the example set before them in their new home.

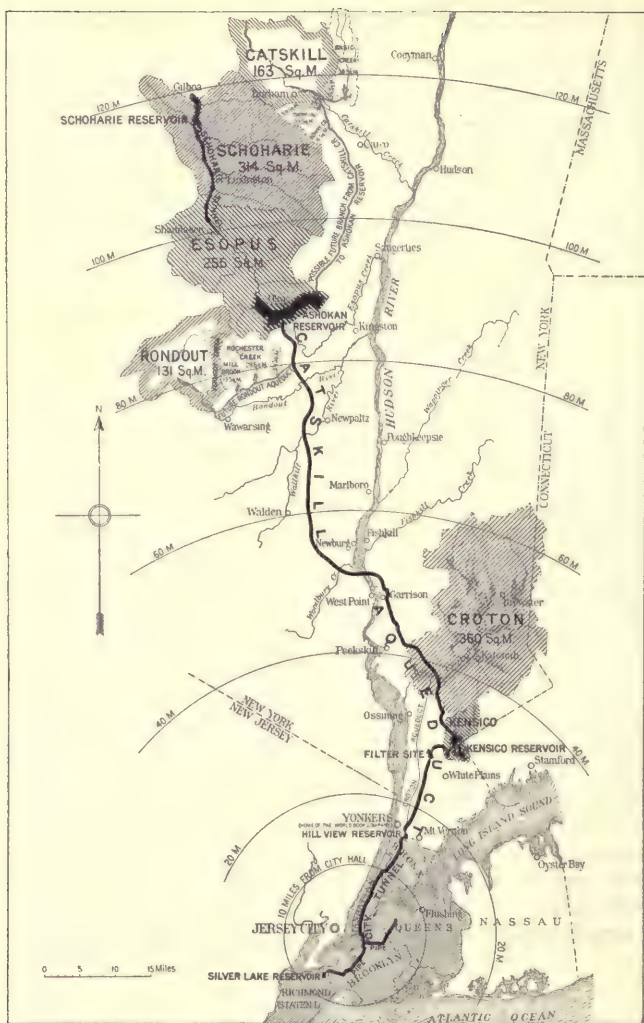
SUGGESTIONS FOR FURTHER STUDY

There are many books on the subject of immigration, but there is no subject where we can more easily separate the few best from the remainder. The Report of the Immigration Commission (1911) in forty-one volumes has of itself made useless almost every book written before that time. The essentials of this vast work are contained in the first two volumes, which may be obtained at moderate expense from the Superintendent of Documents. The best book is FAIRCHILD, H. P., *Immigration*. ROSS, E. A., *The Old World in the New*, gives a full treatment based on the report of the Immigration Commission. JENKS AND LAUCK, *The Immigration Problem* (3d ed.), is a convenient compilation of much of the best material in the report. COMMONS, JOHN R., *Races and Immigrants in America*, although written prior to the report of the commission, is still a very valuable book. STEINER, EDWARD A., *On the Trail of the Immigrant*, is a popular, dramatically written, and yet essentially accurate book. HASKIN, FREDERIC J., *The Immigrant, An Asset and a Liability*, presents the facts gathered by the commission in a very interesting but sketchy way. His chapter on "Landing at Ellis Island" especially presents a vivid and concrete picture of the actual working of the immigration laws. Constant use should be made of the United States Census and of the annual report of the Commissioner-general of Immigration.

Topics:

The immigration and immigrants of the several races may be assigned to various students. The suggested methods of restriction may also be debated with great profit.





The New York water-supply system, from which the Greater City obtains the 550,000,000 gallons consumed daily. The shaded portions around the various reservoirs indicate their drainage areas or watersheds. In its journey through the Catskill Aqueduct, the water is carried 110 miles, under mountains, across valleys, and beneath rivers.

CHAPTER XXXIX

MUNICIPAL FUNCTIONS

THE functions of the modern municipality are multifarious in the extreme. It is charged in the first instance with the preservation of the peace and with the enforcement of the bulk of the penal or criminal statutes of the state (see Chapter XXXVIII). In this connection it acts as a unit of public health administration (see Chapter XXXII). It is a local unit also, in the scheme of education, and it has important duties with regard to the care of dependents (Chapters XXXI and XXX). We have also discussed its part in the provision of recreation (Chapter XXIX). We have seen something of the methods by which it regulates its public utility corporations and to what extent it has itself entered upon the ownership and operation of such utilities (Chapter XXXV). There remain certain matters, mostly of the nature of public works, to be treated in this chapter.

**Municipal
functions**

A pure and abundant water supply is the most fundamental of all civic necessities. Impure supplies spread disease, and an insufficient supply causes inconvenience and even suffering.¹ The best resource for a water supply is an uncontaminated lake or artificial reservoir. This has led cities like New York, Boston, and Los Angeles to go far for their water and to take enormous pains to

**Water
supply**

¹ The Romans realized this fact and built great aqueducts to bring the water of the distant mountain lakes to their imperial city. Even more striking as an example of civic engineering is the great Los Angeles aqueduct, which brings the city's water 209 miles from the Sierras. Still more imposing is the great Ashokan dam and reservoir, which can supply to New York, 110 miles away, 500,000,000 gallons of water a day.

keep sources of contamination from the watershed. Somewhat the same result is obtained by drawing the supply from wells or from very large lakes or streams. Chicago gets her water from Lake Michigan, and since the construction of a great intercepting sewer to prevent the pollution of the lake by sewage it is very tolerably pure. Many cities, especially in the more thickly populated portions of the country, are so situated that a pure source of supply is impossible. In this event resort must be had to filtration.¹

**The city
plan**

Of great importance to the convenience and prosperity of a city is its plan. Many people have the very wrong idea that there is nothing more to city planning than city beautification. It is very much worth while to have a city beautiful, both because it adds to the pleasure of the people and because it makes the city more attractive to settlers and thus tends to increase its size and wealth.² A good city plan, however, does much more than make a city beautiful. It provides for maximum utilization of its area, or, in other words, it makes it as convenient as possible for every citizen and every industry.

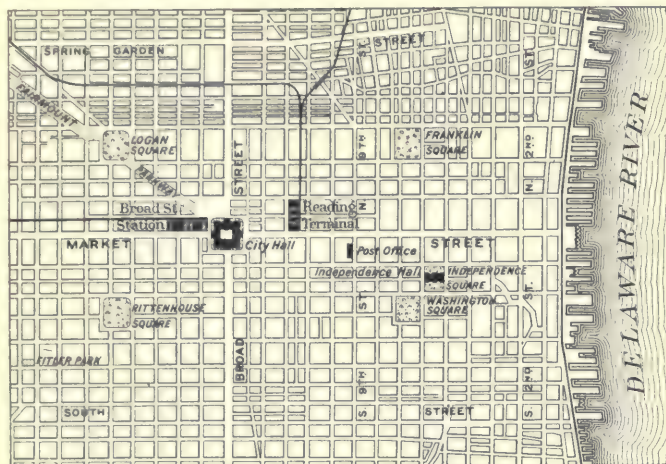
**The
checker-
board plan**

The cities of the colonial period grew up in a rambling way, with narrow, crooked streets, except Philadelphia, for which Penn laid out a plan of rectangular blocks. At the very beginning of the nineteenth century New York

¹ The filters most commonly used are great tanks partially filled with gravel, charcoal, etc., through which the water is forced under pressure. In many places it is necessary because of the turbid nature of the water to use sulphate of alumina or the like to precipitate the solid matter held in suspension in the water before it is admitted to the filter. Where this is carefully done and the water is not forced through the filters too rapidly, good cleansing results are obtained. The other principal type of filter is a series of beds of sand laid on coarse gravel or coke, upon which the water is poured and through which it gradually percolates. These filters are very efficient in the removal of bacteria. They are not much used in this country, however, because of our turbid waters and cold winters.

² One has only to think of cities like Pasadena, Cal., to realize what an asset beauty may be to a city.

adopted a similar plan for its future growth. In this way the familiar checkerboard pattern of street arrangement



Street plan of Philadelphia, which William Penn laid out in rectangular blocks. The chief merit of this arrangement is that one can easily find one's way about.

became the fashion. Practically every city in the United States is cursed with it. Its chief merits are its simplicity (no one can get lost in it) and that it requires a minimum of land for streets. It takes no account, however, of the "lay of the land," and gives, in many cities, streets with impossible grades. Seattle, for example, has been obliged at enormous expense to cut down its hills to prevent its plan from stunting the city's growth. A great deal of wit has been wasted on the crooked streets of Boston, which are popularly supposed to have been built upon the lines of ancient cow paths. As a matter of fact, the cows taking the line of least resistance, followed the contour of the hills. In this they were more rational than the modern San Franciscans, who laid down a rigid checkerboard pattern on nearly vertical hillsides. En-

lightened city planners to-day advocate going around hills rather than over them. The checkerboard plan, further, provides no main arteries of travel. To go anywhere, one must always go around two sides of a rectangle. It provides for great public buildings no sites with adequate approaches.

**The plan of
Washington**

The city of Washington was the first and remains almost the only city in the United States to have had



Street plan of Washington, D.C., showing what can be accomplished by a far-seeing city planner. Note especially the adequate approaches to the public buildings.

prepared for it in advance a plan by a really competent city planner. It was laid out by Major L'Enfant, a capable French engineer officer, as shown in the accompanying illustration. Its chief characteristic is a series of centers from which branch out great radial arteries. It is well calculated to show off to advantage the great government buildings and has had a great deal to do with making Washington the most beautiful city in the country. Other cities have now begun at great expense

to correct the defects of their checkerboard patterns by opening up great radial arteries.¹

One of the greatest sins which can be laid at the door of the checkerboard pattern as found in New York and other cities is that of creating the typical tenement house. Every house lot is twenty-five feet across the front and one hundred and twenty-five deep. The effort to use as much of the lot as possible led to what are known as "packing-case" tenement houses; that is, a brick box, five or six stories high and covering the whole lot. Only the back and front rooms could have any direct access to light and air. The remaining rooms were dark, ill-ventilated, tuberculosis-breeding caves. Every large city now has some form of housing ordinance, and several of the states have statutes on the subject. This legislation is intended to require sufficient light and air for every room. Only a portion of the lot, from two thirds to three quarters, can be built upon; living rooms below the surface of the ground are commonly prohibited; air shafts or wells must be left to light interior rooms.²

City plan
and housing

Another way in which a good city plan can assist in lessening the overcrowding of tenements is by the establishment of a good system of transportation. This requires, of course, the arrangement of street railways, elevated railways, and subways in such a way as to accommodate the greatest number of persons without congestion. In European cities street-car fares are adjusted on the basis of the distance traveled. For short distances they

City plan
and trans-
portation

¹ Where a city by accident or design has a radial street in the midst of its checkerboard, it always soon becomes its principal thoroughfare. Broadway, in New York, is an example.

² These reforms have only mitigated the evil they were directed at. The plans of future cities should provide for shallow blocks in the working-class residence districts. If a block were only seventy-five feet deep, for example, there would surely be a much larger proportion of free air space than under the present system.

are very much less than ours, but for long distances considerably more. This does not tend to distribute population as thoroughly as the flat five-cent rate which prevails in this country. When we pass beyond the five-cent-fare limit, another principle comes into play; namely, that it is only well-to-do people who can afford to go very far from their work. Swift and comfortable transportation rather than a low rate is the motive which will induce them to leave the crowded city for the adjacent country. It is even more advantageous to move out of the city a well-to-do than a poor family, because the former occupies more space in it. Happily, in this country transportation enterprise has made available great rural areas for residence and at rates so low that people of very moderate means can avail themselves of the privilege of life in the open.¹

**Model
tenements**

Something has been done, mostly by private enterprise, in building model tenement houses. The results have been rather disappointing so far as improving the living conditions of the very poor is concerned. In general, people living in more expensive houses take advantage of the good accommodations and low rents of the model houses. The best work along these lines has been done in Europe, in the development of so-called "garden cities" in connection with great industrial plants. There you have to deal with a very definite population which cannot be displaced by others. Some of the garden cities are extraordinarily beautiful, serving to show what could be done in the way of making the living conditions of the people happy, if men were wise and unselfish enough to do so.

The usefulness of streets depends to a considerable

¹ One of the best examples of this can be found in the city of Los Angeles and the surrounding country.



The great Owens River aqueduct, which supplies water to Los Angeles from a source more than two hundred miles distant.



The Croton dam, which holds back the water supply of New York City.

extent upon the character of their paving. Granite-block pavement, which, when laid upon a sound foundation, is more durable than any other, is now coming to be limited to those streets on which a great deal of heavy carting is done. With the extension of the use of the automobile truck, it is probable that it will entirely disappear. For ordinary business streets asphalt upon a concrete base is most frequently used. Its only competitors are wood-block and vitrified brick. The wood-block is slightly less noisy and slightly less slippery than asphalt, but somewhat more expensive. Vitrified brick is doubtless the most beautiful pavement for use in approaches to buildings or where a monumental effect of any kind is desired. It is, however, much less durable under heavy traffic. Residence streets, when paved at all, were until the advent of automobiles macadamized. That is, several inches of stone, coarser at the bottom than at the top, was laid upon the street and rolled into a compact mass. Automobiles, however, quickly pulverize and tear it to pieces, so that it is now being found necessary to use some kind of binding material to hold the surface together. The usual material employed is crude petroleum or some form of asphaltic oil.

Street
paving

To keep the streets clean and free from dust is a matter of first importance to the comfort and health of the community. The duty of caring for the surface of the streets originally belonged to the abutting property owners, and in certain cities they are still assessed for street watering. Street cleaning and watering are, however, now carried on as one of the functions of the municipality. The task of cleaning the streets is the duty of the street department, which does the work directly through its own employees. Strict ordinances are to be found in most cities against the throwing of refuse into

Street
watering
and cleaning

the street. Street watering is sometimes done by contract, and sometimes by the street department directly. The watering and cleaning of the streets in residence districts is usually rather inefficient, due largely to false motives of economy.¹

**Street
lighting**

Two great motives require the lighting of our streets: public convenience and safety. It has been found by experience that good lighting reduces very much the number of violent crimes. Most criminals are cautious or ashamed enough to prefer to work in the dark. With the development of the use of electricity for signs and general advertising purposes, the business portions of our cities are generally pretty well lighted, except, unfortunately, the wholesale districts and the regions adjacent to railroads and wharves. Residence sections are generally poorly lighted, the occasional lights only serving to deepen the shadows in the spaces between.²

Sewers

Down to nearly the middle of the nineteenth century very little had been done by American cities toward providing for the disposition of the wastes of the community. As long as people lived in sufficiently scattered dwellings, the cesspool could be relied upon as a means of disposition of the family waste. When cities, however, came to

¹ In a large portion of the country the question of the removal of snow becomes very important in the winter season. The poets who sing of "beautiful snow" have no reference to the dirty, slushy masses that block traffic on the city streets. It is usual to provide for the removal of snow by contract, as it would be out of the question for the city to maintain throughout the year a force of men and teams sufficient to clear away a heavy fall of snow in a few hours.

² Public street lamps have passed through the various stages of oil, gas, gas-mantle, and the different forms of electric light. For a long time high-hanging arc lights were most favored. Such lights make a good illumination, but they are expensive and add nothing to the beauty of the city. The development of the tungsten and other metal-filament incandescent lights has made it a matter of economy to use numerous lights of this type arranged on ornamented posts, instead of a smaller number of arcs. The beauty of the street is greatly enhanced by this means.

be thickly built up and great factories produced a large amount of this waste, the problem was a very different one. The development of good sewer systems was greatly assisted by the erroneous filth theory of the source of disease. Under the impetus of this idea, great sewers were built, and laws were passed requiring every house or business establishment to be connected with them.

Where a lake, river, or bay has been at hand, it has been the custom to allow the sewage to enter into it. This has sometimes resulted in grave nuisances. If, however, the stream or lake is large enough, and if proper precautions are taken to see that the filth is not swept back upon the shore, this method of disposition is not detrimental to health. Where there is not a sufficiently large lake or stream, and the ocean cannot be conveniently reached, it is necessary to provide some means of purification. One commonly used method is the septic tank, which is simply a sort of glorified cesspool. The sewage is emptied into a large receptacle, and left there a sufficiently long time to permit organic matter to disintegrate and the inorganic matter to settle to the bottom. This makes it somewhat safer to let the sewage flow into streams, but by no means purifies it. Another method is that of filtration. There are many types of filters. The most efficient of these is the slow sand filter, similar to that described as used for the purification of water supplies. If the sewage is allowed to pass through a septic tank first, to remove the solid matter, and the filter beds are kept properly clean, sewage may be purified to such an extent as to make it absolutely safe to empty it into any body of water. Still another method is that of the sewage farm, the sewage being used for irrigation. Where the soil is capable of absorbing large quantities of water, and where the climate is sufficiently dry, this method is

**Sewage
disposal**

highly successful. The farm may be made at least partly to pay for itself. This method cannot, however, be put into general use, because it requires a great deal of land and because in a damp climate sewage is not taken up by the soil.

**Garbage
and refuse**

The collection of garbage and other household refuse is sometimes left to private scavengers, who charge a fee for their services. In most cities, however, it is very properly a matter for direct municipal action. It is administered by the same department which cares for cleaning the streets. As in the case of sewage, the most difficult problem is that of disposition. Something can be gained by picking over dry refuse. There is always a considerable amount of coal in ashes, and American families are peculiarly improvident in throwing away articles which might be made use of. Efforts have also been made to utilize garbage. A little of it can be sold for fertilizer. It is sometimes sold to farmers who feed it to hogs, but this practice is generally condemned by health authorities. Some cities have reduction plants, at which soap and other articles are made from garbage. These ventures, however, have not generally proved successful. Cities on the seacoast frequently dispose of their refuse by dumping it at sea. This is not a bad method, provided they dump it far enough out. For inland cities the most satisfactory method is incineration; that is, burning at a sufficient temperature to reduce the whole mass to clinker. The incinerator furnaces may be used to heat boilers and in this way produce power for municipal purposes, thus diminishing the cost of the work.

**Fire
protection**

The annual loss from fires in American cities is far greater than in those of Europe. This is largely to be accounted for by the greater carelessness of Americans. It should be impressed on every mind that it is of the

greatest importance to prevent these losses. A building destroyed by fire means a loss to the whole community. Where a building is insured, the loss is merely distributed over a great body of persons who are paying fire insurance premiums. In every city there will be found building ordinances of varying degrees of strictness. These ordinances generally establish limits within which wooden buildings are not allowed. They prescribe the method of construction of chimneys, boilers, etc., and establish rules for electric wiring, defects in the last being one of the chief causes of fires. The fire department itself should be regarded only as a last resort. The first prerequisite of a successful fire-fighting system is a good water supply. It was the breaking of the mains and the consequent inability to get water which made the San Francisco fire department helpless against the conflagration which followed the earthquake of 1906.¹ Fire hydrants should be located at convenient intervals. Several of our cities have created artificial high-pressure systems for use in the region of skyscrapers. Streams can now be thrown with tremendous force over the very tops of these buildings, thus reaching fires against which the old fire engine would be helpless. In former days great dependence was placed upon the fire-alarm system, but the general use of the telephone has now made it of relatively little importance. The fire department is organized much like the police department. There is usually a civilian board of fire commissioners, or a single fire commissioner. In commission-governed cities there is frequently a commissioner of public safety, who is in general charge of both police and fire departments. The actual working head of the department is the chief, while

¹ That city has now established reserve reservoirs for fire purposes in strategic locations throughout the city.

each fire house is in charge of an officer, usually a captain. In most cities of any size the firemen live at the fire houses, and are on duty twenty-four hours during the day. Each man, however, is entitled to certain hours off in the course of the week. In small places it is not unusual for at least part of the firemen, who are known as "call men," to come from their homes or places of business on hearing the alarm.

SUGGESTIONS FOR FURTHER STUDY

BEARD, pp. 603-637, and *Readings*, pp. 535-555, in a measure parallel this chapter. Two books deal with the general field of the chapter: MUNRO, W. B., *The Principles and Methods of Municipal Administration*, and ZUEBLIN, C., *American Municipal Progress* (Revised Edition). The first is the more scholarly, the latter the easier reading for high school students. "The American City" and "The Survey," monthly magazines published in New York City, are currently full of material on the subject. Below are given certain specific references on the various topics touched upon.

Water Supply: BEARD, C. A., *American City Government*, pp. 266-269.

City Plan: BEARD, C. A., *American City Government*, pp. 356-386; HOWE, F. C., *The Modern City and Its Problems*, chs. xv and xvi; *European Cities at Work*, ch. v, are useful brief references. MOODY, W. D., *Wacker's Manual of the Plan of Chicago*, will be very useful with young pupils. It would be well if each school could have in its library one of the large illustrated books on the subject, such as KOESTER, FRANK, *Modern City Planning and Maintenance*, and ROBINSON, C. M., *Modern Civic Art*. The best smaller book is NOLEN, JOHN, *Replanning Small Cities*. See also *Proceedings of Annual City-Planning Conferences*. An excellent bibliography will be found in Berkeley Civic Bulletin, vol. ii, No. 8, City Club, Berkeley, Cal.

Housing: BEARD, C. A., *American City Government*, pp. 287-310; HOWE, F. C., *The Modern City and Its Problems*, chs. xix and xx; *European Cities at Work*, ch. ix. VEILLER, LAWRENCE, *Housing Reform*, is the best book on this subject.

Street Paving, Cleaning, Watering, and Lighting: BEARD, C. A., *American City Government*, pp. 242-260; BAKER, M. N., *Municipal*

Engineering, pp. 11-24, 151-156; New York City Report of the Mayor's Committee on Pavements (1912).

Sewers and Sewage Disposal: BEARD, C. A., *American City Government*, pp. 269-271; BAKER, M. N., *Municipal Engineering*, pp. 125-150.

Garbage and Garbage Disposal: BAKER, M. N., *Municipal Engineering*, pp. 157-166.

Fire Protection: BEARD, C. A., *American City Government*, pp. 282-286; BAKER, M. N., *Municipal Engineering*, pp. 175-181.

Topics:

Each of the functions of city government as exhibited in your own and neighboring cities may be made the subject of a student's report.

CHAPTER XL

REVENUE AND TAXATION

Sources of revenue

OUR governments derive their revenues from three main sources, "taxes," "fees," and "prices." A tax is a general compulsory contribution of wealth to be used for the benefit of all the people, as for the support of police, education, the army, etc. A fee is a compulsory contribution intended to meet some or all of the expense of a government service, which is partly for the benefit of the public and partly for that of the person from whom it is collected. A familiar example is to be found in those payments required in connection with various steps in the administration of justice. A price is the charge made by the government for a commodity or service sold by it. Besides these main sources of revenue, governments derive income from gifts, fines, etc., but they are of relatively small account.

Benefit and ability theories

Fees and prices give the student of public finance little trouble. The one manifestly must be proportioned to the expense of the service rendered, while the other is largely determined by the same forces which determine the rate at which private individuals would sell the same service. The rules, however, which should be followed in fixing the rates or determining the form of taxation are by no means so easily discovered. The justification of a tax is of course the benefit which it confers on the public. It was at first assumed that the amount of taxation each person should pay should be in proportion to the benefit conferred upon him. As a matter of fact it is often impossible to show that one man benefits more largely from

the activities of government than another. This led to the abandonment of this theory in favor of the so-called "ability" theory, which would measure taxation in accordance with the ability of each citizen to contribute. It is now generally agreed that "ability" increases more rapidly than wealth. In other words, a man with a large income is able to pay a larger proportion of it in taxes than a man with a small income.

Customs duties, which we popularly call the "tariff," Tariff are one of the most important sources of revenue of the national government.¹ Even more important than its results as a revenue producer are the effects of the tariff on trade and industry. We have had in the United States since 1816 a "protective" tariff. The purpose of a protective tariff is to lay such duties as will prevent wholly or in part the importation of an article of commerce and thereby encourage or protect its manufacture at home. That a tariff may accomplish this result the history of the United States abundantly proves. The opponents of the protective tariff advocate a tariff "for revenue only," or "free trade." Such a tariff is, strictly speaking, impossible, even the least duties having an effect on trade. A protective duty, on the other hand, may prevent importation and consequently cut off revenue. As a practical matter, since 1816 no tariff has been laid in this country in which both elements, protection and revenue, were not considered.

¹ For the year ending June 30, 1914, the income of the United States from various sources was as follows:

Customs duties	\$292,000,000
Internal revenue taxes	309,000,000
Corporation excise taxes	11,000,000
Income tax	60,000,000
Miscellaneous	62,000,000
Total	\$734,000,000

The argument for free trade

The argument against protection is based on the theory of international trade. Economists hold that, in the absence of any interference, each nation will produce and sell to other nations those articles which it can produce with the greatest relative advantage. The result will be the greatest economy in production, since every commodity will be produced where it can be produced most cheaply. The erection of a tariff barrier which forces people to buy at home for a greater price what they might buy abroad for less, is to the mind of the "free-trader" the merest folly. The tariff, they say, is a tax on all consumers for the benefit of those who produce protected articles. It must be admitted that there is great force in this contention. Most of the great theoretical economists have been free-traders. The practice, however, of the principal countries of the world except Great Britain has been in direct defiance of their theories.

Arguments for protection

The best of the protectionist arguments are two in number. (1) *The Infant Industry Argument*. If, by protecting an industry in its infancy, it may ultimately become established, the increase in the productive activity of the country may well be worth the price of protection. A well-rounded industrial life tends to prevent those periods of depression which are most marked in countries whose prosperity depends on a few staple products. National independence is likewise more secure. (2) *The Standard-of-Living Argument*. It is frequently and with much justice contended that such a degree of protection as will make up the difference in cost of production here and abroad caused by our higher rates of wages is defensible as a means of maintaining the standard of living of American labor. It is to be remembered, too, that where industries have grown up under a system of protection, to withdraw or suddenly reduce that protec-

tion will cause great disturbances, including the throwing of workers out of employment, until time has given opportunity for readjustment.

The great difficulty with the system of protection has been the impossibility of getting from Congress any fair and scientific adjustment of duties. The desire of the protected for more protection is apparently insatiable. The political pressure which big and little interests exert on their own behalf has proved irresistible. Duties have been arranged to satisfy these demands, with little regard for the interests of the country at large. "Infant industries" have shown no disposition to try to walk alone even after half a century of tariff assistance, and as a result some of them have grown to giant monopolies. The tariff, indeed, has, by excluding foreign competition, been one of the most powerful bulwarks of the so-called "trusts." The desire of big business for protection has led to much corruption in American politics. These facts have induced many people not theoretically opposed to protection to become advocates of a low tariff.

Unscientific
character of
protection

The General Revenue Act of 1916 provided for the appointment by the President of a Tariff Commission of six members. The term of the commissioners is to be twelve years, and their annual salary \$7500. The duty of the commission is to study and make recommendations on all aspects of the tariff problem. If its behests are only heeded, such a commission can do much to put tariff legislation on a scientific basis.

The Tariff
Commission

Tariff duties are of two kinds, *ad valorem* and specific. An *ad valorem* duty is a certain proportion of the value of the goods imported. A specific duty is a given sum per yard or per pound. It is obvious that a specific duty bears more heavily on the lower and cheaper grades of a given product than on the better and more expensive.

Tariff duties
in the
United
States

Frequently both kinds of duties are applied in combination. The general tendency has been toward an increase in duties, which began at a very moderate level and reached their climax in the so-called Dingley Tariff of 1897. The Payne-Aldrich Tariff of 1909 was a half-hearted attempt by the Republican party to redeem the pledge of tariff reduction made in its platform of 1908. The tariff of 1913 passed by a Democratic Congress shows an appreciable reduction of duties, but is far from the free-trade standard.

**Internal
revenue
taxes**

Excises or, as we generally speak of them in the United States, internal revenue taxes are "those taxes levied within a country on commodities destined for consumption."¹ They are collected from the producer, who of course includes the tax in the price of the article. It is recognized that only a severe national crisis can justify their use in such a way as to increase the cost of the necessities of life. Usually, therefore, these taxes are laid upon luxuries. There are United States taxes on brewers, distillers, retail liquor dealers, etc. The payment of these taxes is represented by a "stamp" or receipt hung up in their place of business. There are also taxes on certain liquors, cigars, cigarettes, playing cards, etc., payment of which is represented by a stamp pasted on the box or container. The receipts of the United States from internal revenue taxes amounted in 1913 to \$34,416,966. In time of war or financial difficulty, as in 1914, the rates may be increased and articles added to the taxable list.² Applied to luxuries, the excise is a convenient and justifiable means of raising revenue. Liquor and tobacco especially will bear very high taxation without any material reduction in their consumption.

¹ Plehn, C. C., *Introduction to Public Finance*, p. 169.

² The law of 1914 included taxes on telephone and telegraph messages, express packages, and certain financial transactions.

The third most important source of the revenue of the United States is now the income tax. A tax on incomes is in the opinion of the leading writers on taxation the fairest of all taxes. The chief objection to it has arisen from the necessity of inquiring a good deal into the private affairs of individuals in order to determine what their incomes are. The history of the income tax in the United States is very interesting to the student of government. Article I, Section 9, of the Constitution provides that "no capitation or other direct tax shall be laid, unless in proportion to the census or enumeration hereinbefore directed to be taken." The first income tax passed by Congress in 1862 called for a tax of three per cent on all incomes of from \$600 to \$10,000 and five per cent on all others. It was obviously unapportionable among the several states. If it were a direct tax, it was, therefore, unconstitutional. The Supreme Court, however, in the case of *Springer vs. the United States* (102 U. S. 586), held that it was not a direct tax, and with certain changes in the rates this law remained in force until 1870. In 1894, to make up expected deficiencies in revenue owing to a reduction of tariff duties, Congress again passed an income tax law. The following year the Supreme Court turned its back on its former decision and declared it a direct tax.¹ In 1909 Congress submitted to the states the Sixteenth Amendment, which received its thirty-sixth ratification in February, 1913. As a part of the tariff revision of 1913, a very complete and thoroughgoing income tax was adopted.²

The income
tax and the
Constitution

The present
income tax

¹ *Pollock vs. Farmers' Loan and Trust Co.*, 157 U. S. 429; 158 U. S. 601.

² It applied to all citizens of the United States, and to residents of foreign countries deriving income from the United States. The normal rate is two per cent. This rate is laid on the net income of all domestic corporations and on that part of the income of foreign corporations which is derived from this country. It is laid, also, upon the incomes of individuals above \$3000

**General
property tax**

The basis of state and local taxation in the United States is the general property tax. The theory of this tax is that every species of property should contribute to the support of government in proportion to its value. Among the objects included within its range are land, buildings, various forms of capital such as the stock of banks and corporations, money, and other personal property. The total amount of property having been determined by assessment, a rate of taxation sufficient to meet the expected cost of government is levied on the property in the hands of each individual and corporation. Assessments for state and county purposes are made by an elected county official, except in New England, where the assessor is elected by the town. Cities sometimes make use of the county assessment, but frequently separately assess all property for their own purposes. In

(\$4000 in the case of the joint income of a husband and wife living together). Additional taxation is put upon incomes exceeding \$20,000, as follows:

1%	on	amount	by	which	income	exceeds	\$	20,000
2%	"	"	"	"	"	"	"	40,000
3%	"	"	"	"	"	"	"	60,000
4%	"	"	"	"	"	"	"	80,000
5%	"	"	"	"	"	"	"	100,000
6%	"	"	"	"	"	"	"	150,000
7%	"	"	"	"	"	"	"	200,000
8%	"	"	"	"	"	"	"	250,000
9%	"	"	"	"	"	"	"	300,000
10%	"	"	"	"	"	"	"	500,000
11%	"	"	"	"	"	"	"	1,000,000
12%	"	"	"	"	"	"	"	1,500,000
13%	"	"	"	"	"	"	"	2,000,000

In other words, in the case of an income of one million dollars the tax would be nothing on the first \$3000, two per cent on the next \$17,000, three per cent on the next \$20,000, four per cent on the next twenty, etc., up to seven per cent on the last \$500,000. The income of an individual, so far as it is derived from a corporation which has been taxed, is exempt. Deductions are made for wear and tear on property, taxes, losses by fire uncompensated by insurance, etc. As far as possible the normal rate is collected at the source of the income, the law requiring employers, trustees, agents, etc., to withhold one per cent of any fixed or determinable annual income in excess of \$3000.

the latter event an assessor is elected by the people or appointed by the mayor or council. Personal property from its nature has to be assessed each year. Real property assessments are usually made every year for local purposes, but sometimes only every five or ten years for state purposes. The task of assessing property is one that calls for great honesty, independence, and not a little technical skill. It is a regrettable fact that our assessors all too often fail in one or the other of these particulars. After the assessment has been made, the city council¹ or county board sits as a "board of equalization." In this capacity it hears the complaints of taxpayers and corrects and equalizes the work of the assessor. Where the local assessment is made the basis of state taxation, it is very plainly to the advantage of the locality to be assessed at as low a valuation as possible. County assessors may vie with one another in reducing assessments, until the state is embarrassed and the county or city government, which generally can borrow or spend only a fixed proportion of its assessed valuation, is crippled. This has led to the institution of state boards of equalization, which are sometimes composed of state officials *ex officio* and are sometimes elected by the people. These boards raise or lower the general level of local assessments, but do not touch the assessments of particular parcels of property.

The general property tax, standing alone as it practically does in most of our states, has come in for the severest condemnation of writers on taxation. The possession of property is by no means a certain proof of ability to pay. Witness that common expression of an everyday condition, "land poor." Even more serious are the in-

**Criticism of
the general
property tax**

¹ Sometimes, as in New York City, other provision is made for equalization.

equalities resulting from the system of assessment. The ignorance and lack of independence of assessors result in all sorts of inequalities, even in the valuation of real estate and buildings which are quite impossible of concealment. With regard to personal property the system breaks down entirely. The temptation to deceit and evasion is too great for human nature to resist. In general it is the well-to-do who escape and those of moderate means who pay on their personal property. The effect of the tax is to make a great many liars and hypocrites for a comparatively small revenue return.¹

Inheritance tax

Many of the states make use of an inheritance tax. This tax brings into the coffers of the state a proportion of all considerable estates descending by inheritance. The proportion frequently increases with the size of the estate and with the distant relationship of the heirs. In most states small estates and those passing to the husband, wife, or children of the deceased are exempt from taxation. There can be no doubt of the justice and efficiency of this tax. The administration of the estate of a deceased person brings its value to light, so that there is no oppor-

¹ The discrepancy between the assessments of real and personal property is clearly shown in the following tables:

ESTIMATED TRUE AND ASSESSED VALUATION OF REAL AND PERSONAL PROPERTY IN THE UNITED STATES, 1912

(Special Report of the United States Census Office on Wealth, Debt, and Taxation, 1907)

	TRUE VALUE	ASSESSED VALUE
All property	\$187,739,071,090 *	\$69,452,936,104
Real property and improvements .	110,676,333,071	51,854,009,436
Personal and other property (in- cluding railroads, etc.)	77,062,638,019	17,598,926,668

*Of this amount \$12,313,519,502 was estimated to be exempt from taxation.

tunity for evasion. It occasions little complaint, because persons who receive by inheritance a property which was amassed without exertion on their part are glad to get it, however much reduced by taxation. This is truest of large estates going to distant relatives. Hence the wisdom of making the tax progressive both by size of the estate and the degree of relationship of the heirs. Many radical reformers would make the inheritance tax so large as to prevent the transmission of colossal fortunes by inheritance. In 1916 the United States established an estate or inheritance tax, amounting to one per cent of a "net" estate not exceeding \$50,000 and increasing with the size of the estate up to ten per cent on estates of over \$5,000,000. The net estate is determined by deducting from the gross estate an exemption of \$50,000 for funeral expenses, cost of administration, and losses incident to settlement of the estate.

The simplest and one of the oldest forms of taxation is the poll tax, a uniform contribution required of each

The poll tax

ASSESSED VALUATION OF REAL AND PERSONAL PROPERTY IN THE FIVE
LARGEST CITIES OF THE UNITED STATES

(United States Census Bureau, Financial Statistics of Cities, 1911)

	REAL PROPERTY	PERSONAL PROPERTY
New York	\$7,858,840,164	\$357,923,123
Chicago	663,376,027	223,578,274
Philadelphia	1,545,588,549	2,014,744
St. Louis	423,554,460	101,319,770
Boston	1,146,764,000	274,832,799

It is impossible to imagine that there is only \$357,000,000 worth of personal property in New York, or that there is only \$80,000,000 more such property in New York than in Boston. Chicago property is ostensibly assessed at twenty-five per cent of its value, New York and Boston property at one hundred per cent. On that basis there would be really three times as much personal property in Chicago as in New York, which is absurd.

adult male citizen without regard to wealth. Of course, such a tax must be small, or it would become an intolerable burden on the poor. The usual amount is two dollars. It is very generally evaded except by those who have property taxes to pay. In their case it is made a lien on their property and collected with the rest of the taxes. The poll tax generally goes to the support of the state government, but in some instances a tax upon polls is used for local purposes, especially roads. The road tax may usually be paid in money or be "worked out" by the labor of the taxpayer.

**Business
taxes and
licenses**

States and localities derive considerable revenue from taxes on the conduct of certain businesses. These taxes are, of course, closely analogous to the internal revenue taxes of the United States government. The chief difference is that the motive of their enactment is very often to regulate or restrict a business, in the interest of the public welfare. Hence they are frequently called "licenses." The most important are the taxes on the sale of intoxicating liquors. Where the sale of liquors is not entirely prohibited, the policy of "high license" generally prevails. This tax is highly productive. In New York, where the tax is divided, one third going to the state and two thirds to the city, the city's share in 1910 was \$5,864,744. Even then the limits of the tax-paying power of the saloon have not been nearly reached. It is argued in favor of this tax that it is only fair that a business which adds so materially to crime, pauperism, and insanity should be taxed to pay for the salvage of its own wrecks. On the other hand, most opponents of the saloon object to its becoming a large source of revenue because of the disinclination of the public to lose income by prohibiting the sale of liquor altogether. Another class of licenses is imposed rather for the purpose of securing the regis-

tration of those engaged in the business than for revenue.¹

A good deal of money is received by our national, state, and local governments by way of fees for services. A corporation pays a fee for its articles of incorporation, an automobilist for his car number.² Wherever papers are filed or recorded, a fee is usually required. Every step in getting a case through the courts is dogged with fees. One form of fee deserves particular attention—the special assessment. Where public improvements, such as paving, sewers, street lights, etc., are made, it is customary to assess the neighboring property owners as nearly as may be in proportion to the benefit conferred. The theory of these special assessments is that the value of the property is enhanced by the improvement and may therefore be justly held to pay for it. A city is thus enabled to carry out great schemes of betterment which could not be paid for by general taxation. Instead of assessing the neighboring property owners to pay for a great improvement, the city may, if the state constitution and laws permit, acquire the abutting property by condemnation.³ Then, after the work is done, it may sell for increased prices. It is by this means that the remarkable remodeling of many European cities has been accomplished. Unhappily it is only in a few of our states that a city may take more land than is needed for the “public use” in the narrowest sense of that term.

**Fees and
special as-
sessments**

¹ STATE REVENUE RECEIPTS, 1913

(U. S. Census Report on Wealth, Debt, and Taxation)

General property taxes	\$139,750,303
Special property taxes	67,675,933
Poll and occupation taxes	2,965,069
Business and income taxes	53,642,322
Liquor licenses	20,992,857

² This may be made an important source of income.

³ This is known as “excess condemnation.”

**Revenue
from public
utilities**

Next to the general property tax, the revenue from public utilities is the largest single source of income of American cities. The most significant point in this connection is that the conduct by municipalities of income-producing utilities is rapidly increasing.¹

**Separation
of state
and local
taxation**

In most states both state and local governments derive their support almost altogether from the general property tax. In some — for example, New York and California — the objects of taxation have been divided between the state and the locality. The state, under this system, derives its revenue from taxes on corporations, including railroads and other public service companies, insurance companies, and banks.² The general property tax is thus left to the cities and counties. The chief advantages of this system are that it supports the state on a class of

¹ REVENUE RECEIPTS OF CITIES OF OVER 30,000

(Plehn, Carl C., *Government Finance in the United States*)

		PER CENT
Total	\$866,000,000	100
General property taxes	526,000,000	60.7
Special property taxes	12,500,000	1.4
Poll and occupation taxes	1,500,000	0.2
Business taxes	53,000,000	6.1
Non-business license taxes	4,000,000	0.5
Special assessments	72,500,000	8.4
Fines, forfeitures, and escheats	4,500,000	0.6
Subventions and grants	34,500,000	4.0
Donations, gifts, and pension assessments	4,000,000	0.5
Earnings of general departments	21,000,000	2.4
Highway privileges	12,500,000	1.4
Rents of investment properties	9,000,000	1.0
Interest	24,500,000	2.8
Earnings of waterworks	71,000,000	8.2
Other earnings	15,500,000	1.8

²In California, railroads, street railways, car, pipe-line, power, and express companies pay a fixed portion of their gross earnings to the state. In return their operative property is exempted from local taxation. Banks pay on their capital, surplus, and profits. Insurance companies pay on their gross premiums, and other corporations on their franchises.

property which largely escaped local assessment under the general property tax, and that it does away with the temptation to under-assessment by local assessors.

Many people believe, with Henry George, that land should bear the whole burden of taxation. That a "forty-niner" who purchased a worthless block of land in San Francisco and held it without improvement for half a century, should through the growth of the city come to be worth millions appears to them monstrous. They call that part of the value of land which it derives from any other source than the labor of man upon that land the "unearned increment." This, they say, it is the right and duty of the state to confiscate by taxation. It will immediately occur to your mind that while the "increment" is unearned in the hands of the "forty-niner," it may be bought by the product of the labor of another. Suddenly to apply the "single tax" would be to do incalculable injury to a vast number of people. Further, it is actually certain that the revenue produced would be inadequate.¹ With the idea that a tax on land encourages while a tax on improvements and on personal property discourages progress, we can have only sympathy. For the purpose of local taxation the personal property tax should be abandoned and the taxes on improvements gradually reduced.

The single
tax

SUGGESTIONS FOR FURTHER STUDY

The best general work for the elementary student is PLEHN, C. C., *Introduction to Public Finance* (3d ed., 1909). An excellent brief and up-to-date consideration is to be found in the same author's *Government Finance in the United States*, pp. 116-155. See also TAUSSIG, F. W., *Principles of Economics* (vol. ii), pp. 483-561. *The Encyclopedia of American Government* (Appleton) deals very fully with this subject under the titles "Tax," "Taxation," etc. See also BEARD, pp. 359-365, 714-718, and *Readings*, pp. 323-338, 590-605.

¹ Plehn, *Introduction to Public Finance*, p. 108.

On municipal taxation see MUNRO, W. B., *Principles and Methods of Municipal Administration*, ch. x. Copies of the tax laws of most states are available in separate printed form and may be obtained on application to the proper authorities. On city taxation, the Census Bureau Report on "Financial Statistics of Cities" will be found helpful. On the subject of the tariff it would be well to have a copy of the Underwood Act of 1913. Good use can be made of the Congressional Record for the period of the tariff debate. TAUSSIG, F. W., *Tariff History of the United States* (1914 edition), is the best authority on the development of tariff legislation in the United States. TARBELL, IDA M., *The Tariff in Our Times*, deals very interestingly with the tariff in its political aspects. See also *Encyclopedia of American Government*, especially article on "Tariff Administration."

For teachers: BASTABLE, C. F., *Public Finance*, and SELIGMAN, E. R. A., *Essays on Taxation*, *Progressive Taxation in Theory and Practice*, and *Income Tax*, will be found of great value. A very thorough account of the tax system of each state is given in the volume on *Wealth, Debt, and Taxation* published by the Census Bureau in 1913. On the single tax, of course the classic favorable statement is to be found in GEORGE, HENRY, *Progress and Poverty*. It is discussed much more briefly in FILLEBROWN, C. B., *The A B C of Taxation*. The opposition view is very forcibly stated by PLEHN and SELIGMAN. There has been a great deal of periodical literature on this subject.

Topics:

- The Tax System of Your State.
- The Tax System of Your City.
- Methods of Assessment.
- Each of the More Important Tariffs.
- The Income Tax — Is It a Direct Tax?
- Income Tax Law of 1913.
- War Revenue Measure of 1914.
- Single Tax.

CHAPTER XLI

GOVERNMENT FINANCE

DOWN to 1865 practically all appropriations of the national government were considered in the Committee on Ways and Means, the committee in which also originate all revenue bills. In that year a standing Committee on Appropriations was provided for, and as time has gone on more and more committees have come to have a finger in the appropriation pie. Several of the largest items of government expenditure are now authorized in separate bills; for example, the agricultural bill, the army bill, the naval bill, the river and harbor bill, each of which originates in a distinct committee. Indeed, any committee may report a bill carrying an appropriation. The basis for the action of all the committees which deal with appropriations is the "book of estimates." This is prepared each year by the Secretary of the Treasury and contains the estimates of the several departments as to their needs for the coming year. The departments naturally ask for more than they expect to get, indeed for more than on a fair basis of apportionment they ought to have. Neither the Secretary of the Treasury nor any other officer makes any attempt to revise these estimates or to adjust them to the needs of the government as a whole.

Appropriations by Congress

Although many of the committees labor hard upon this mass of undigested material, there is not time in the midst of the rush of one brief session to find out just what they should do with each of the myriad items placed before them. Further, the appropriating committees are subjected to great pressure by each bureau and depart-

Pressure on committees reporting appropriations

ment to make the particular appropriation in which it is interested as large as possible. Then, there is the pressure from localities which will be benefited by proposed expenditures. It only too often happens that members of Congress who are each anxious to secure public works for their districts will unite to support one another's post offices, docks, or naval stations, irrespective of the merits of the projects. This is called "log-rolling." The chairman of the Committee on Appropriations is supposed to watch the work of the other spending committees, but such coördinating influence as he exercises is spasmodic and ineffective. The committees incline to be jealous of one another and each is disposed to try to drive its bill through, irrespective of every other. There is no practical way of forcing an extravagant committee to curtail its grants. It is very natural, therefore, that the committee-men say in effect, "What is the use of our making ourselves unpopular with our fellow-members and our constituents by practicing an economy which will only enable some other committee to be extravagant?"

Appropriation bills in the Senate and House

Appropriation bills, on coming from the committees in the House, are placed on the Union Calendar and are rather perfunctorily debated. Having passed the House, they go to the Appropriations Committee of the Senate, where they pass through the same kind of efforts to enlarge them which they experienced in the House committees. Debate in the Senate itself is more extensive than in the House, and in general the appropriation bills come through this stage in their progress larger than ever. In the conferences which follow, the Senate usually prevails over the House.

How much money will be spent by the government in any year is, therefore, impossible of determination until all the bills carrying appropriations have become law. It

is inevitable that the amount should be large and frequently out of proportion to the revenue for the same period. The commission on economy and efficiency appointed by President Taft, which made an exhaustive study of the causes of wastefulness in the national government, reported as a remedy for the conditions we have just discussed a plan for a comprehensive budget of the estimated expenses of the government. Such an estimate, prepared by the Secretary of the Treasury and transmitted to Congress with the indorsement of the President, would give that body something definite and authoritative to work upon. It would know that each item asked for had been planned to fit into a complete scheme of government expenditure and that the total amount would be nicely adjusted to the expected revenue for the year. Congress would thereby be put in a position to resist the pressure of outside influences, while all departmental attempts to care for their own peculiar interests at the expense of other departments would automatically cease. The United States is now the only great nation in the world which permits proposals for appropriations to originate in the miscellaneous committees of its legislative body. Every other great nation has a budget which originates with the executive.

**Need of a
budget**

Practically the same evils are to be found in the state as in the national system of appropriations. The starting-point is usually a report by the comptroller, auditor, or other chief financial officer, showing the appropriations for the preceding legislative period and an estimate of the needs of the various branches of the state government for the ensuing period. The "general appropriation bill," which in most states carries grants of money for the support of the several departments and institutions of the state, but not the appropriations for new buildings or

**State practice similar
to national**

equipment or for any new miscellaneous causes of expenditure, always originates in a committee of the lower house. Other appropriations are provided for in bills introduced by the members of either house and referred to a variety of committees. The same selfish interests which operate to prevent careful and economical treatment of appropriations by the committees of Congress apply with equal force to those of the state legislatures.

Part of the
governor

The final result in our state governments is made much better than it otherwise would be by the fact that the governor usually has a power not possessed by the President, that of vetoing the items of appropriation bills. Where this is the case, the general appropriation bill at least has the benefit of a final revision by the governor, who well knows that he will be held politically responsible for extravagance. This sometimes, and very fortunately, results in the governor's being consulted as the bill is in course of preparation, a period at which his wisdom and responsibility can have more effect than through a veto after the measure has passed both houses. Other appropriations generally come to the governor each in a separate bill. Many state constitutions require this, and it is the custom everywhere. With regard to these miscellaneous appropriations, the existence of the governor's veto seems to have given the legislature a feeling of irresponsibility. It is not uncommon to hear the sentiment expressed, "Let's put it up to the governor." Most governors in these days meet the responsibility thus shifted upon them by a vigorous use of the veto.

A state
budget

The most necessary reform in the administration of state finance is the use of a budget emanating from the governor, and transmitted to the legislature with the weight of his authority behind it. An Ohio law of 1913 provides that upon estimates and figures submitted by

the several departments and the auditor, the governor shall submit at the beginning of each regular session a budget of current expenses for the next two years, together with the estimates of the various departments. New York adopted in the same year a somewhat different method. The budget is prepared by a state board of estimate consisting of the governor, lieutenant-governor, president *pro tempore* of the senate, Speaker of the assembly, comptroller, attorney-general, and commissioner of efficiency and economy. Alabama has provided that the governor, auditor, and attorney-general shall prepare the general revenue bill. In California the board of control prepares a careful set of estimates which the governor sends to the legislature. As the board of control is the governor's personal representative in the state government, this is very like the preparation of the budget by the governor himself. Another very much-to-be-desired reform is one suggested by Governor Hughes in his message to the New York legislature in 1910 — a budget for public buildings, public works, and institutional development.¹ No coherent plan for a continuous and well-balanced development of state activities and institutions is possible so long as each appropriation must be treated in a special bill.

The appropriations of counties, cities, and other subdivisions of the state were formerly made in the same hit-or-miss fashion which we have described for the state and nation. There has been little or no improvement, so far as county boards are concerned. In cities, however, where only a few years ago the irregularity and wastefulness of appropriations were most scandalous, we find that the most advanced methods have been adopted to secure

County and
city budgets

¹ The board of control of California prepared for the sessions of 1913 and 1915 a budget of special appropriations which was fairly well adhered to.

wisdom and economy in expenditure. Practically all the more recent city charters require a budget originating with the mayor, as in Boston, the city manager, as in Dayton, or the city commission, as in several hundred commission-governed cities. In New York City the budget is proposed by the board of estimate and apportionment, and the board of aldermen may lower or cut out altogether but cannot raise any item.¹

**Honesty and
efficiency**

Of equal importance with the method of making appropriations is the method of seeing that the money appropriated is expended honestly and efficiently for the object for which it was appropriated. In the United States government this function is centralized in the Treasury Department, which has an auditor for each of the more important divisions. No money can be drawn from the treasury except by virtue of an appropriation by Congress, and it may be safely said that the United States is admirably protected against the danger of any person securing anything from the treasury to which he is not legally entitled. Indeed, the amount of red tape which has to be unwound in order to release the clutch of the treasury upon its funds is somewhat terrifying. As to the efficiency with which federal funds are expended, there is more room for doubt.² The commission on economy and efficiency found many matters to criticize. Generally speaking, as compared with other governments, especially with our own state governments, that of the

¹ Several years ago the New York bureau of municipal research inaugurated a budget exhibit, at which were presented through the medium of models, pictures, tables, etc., what the city's money was being spent for. It had the effect of discouraging useless extravagance and at the same time of making the people willing to stand the burden of taxation for work the merit of which was made obvious by the exhibit. Similar exhibits have been undertaken with like good effect in other cities.

² The late Senator Nelson W. Aldrich, of Rhode Island, estimated a few years ago that there was \$300,000,000 wasted each year in the administration of the national government.

United States is relatively fairly efficient, owing to the concentration of power over and responsibility for the conduct of the administration in the hands of the President and the high standards of honor and pride in their work which prevail among the officers of the United States.

The disorganized character of state administration which we have already considered at some length has played an important part in bringing it to pass that state appropriations are sometimes dishonestly and very often inefficiently spent. Claims for payment from the state treasury are usually audited by the comptroller, auditor, or other chief financial officer. This audit, however, covers only the question as to whether the expense has been legally incurred, and where appropriations for institutions and offices scattered over a great state are made, as is often the case, in lump sums, there is considerable opportunity, not only for waste, but for speculation as well. As we have previously noted, boards of control directly subject to the governor have been established in several states with considerable power of supervision over the expenditures of state institutions. The California board, which may be taken as fairly typical, has established a system of pre-audit by which the requisitions of every institution and department must be approved by the board of control before supplies may be ordered or contracts made. Very notable economies have been secured as a result of this supervision. Uniform systems of account have been installed in all institutions and departments, so that accurate comparisons between one and another are now possible.

State auditing systems

The accounts of cities are kept in a way to prevent actual stealing from the treasury. Most cities of any considerable size have an auditor or comptroller elected directly by the people and entirely independent of the

City accounts

city council. Every claim against the city has to be based upon an appropriation by the council, which fact is certified by the signatures of the chairman and clerk of that body. A claim to be paid out of the appropriation in question must be signed by the officer under whose direction the work is done or by whom the receipt of the supplies has been checked, and by the head of the department concerned. It still is not a valid warrant for drawing money from the treasury until it has received the approval of the auditor or comptroller. The money is finally paid by the treasurer, who is almost always independent of the comptroller. All the officers concerned in handling the city's money are under heavy bonds to perform their duties faithfully. Once or twice a year the books are audited by a certified public accountant selected by the mayor or council. The treasurer's and comptroller's accounts must balance, and proper receipts and vouchers must be on hand to prove the real character of each transaction.

**Efficiency
in city
government**

In the matter of efficiency, progress has been less rapid. We have already spoken of the need of reorganization of city governments in such a way as to give a single responsible head. Fundamentally it is impossible to get efficiency without an efficient method of organization. There are, however, certain changes in the details of financial administration which are indispensable to secure efficiency even under the best possible form of organization. The ordinary method of keeping city accounts is by a single-entry system, which shows very plainly the receipts and disbursements of the city but which throws no light at all upon the matters of revenue and expense. To know the real financial condition of the city, it is necessary to know how much the various activities of the city cost. Getting a total of the city's expenditures for parks, street repairing, sewers, etc., is the simplest form of such segregation. This

is but the beginning. To be useful to a city manager in determining the efficiency of the departments and officers under him, the segregation must be so detailed as to show the cost of each operation. A system of accounting which provides for that kind of segregation is called a "cost-accounting" system. Great modern business houses use such systems, but only a few of our cities have as yet taken advantage of them.

Another needed reform in the matter of municipal and county accounting is that it should be uniform in all the cities and counties of a state. As long as each city keeps its accounts in its own way, there is no possibility of comparison between one city and another. Several states have recognized their responsibilities in this regard and have provided some method of securing at least partial uniformity. In several states this goes no farther than to require an annual report of the financial transactions of cities, towns, and counties to be made to some state officer.¹ This central officer can make his demand for information in such form as to require uniform systems of accounting, in order to make items he calls for readily come-at-able. So far, little use of this power has been made, the state authorities apparently being satisfied to get certain general information or grand totals. The Massachusetts bureau of statistics, the Wisconsin board of public affairs, the comptroller of the state of New York, and similar bureaus in Iowa, Indiana, and Ohio have prepared model schemes of accounting which, on request, may be installed in municipalities.² The Indiana legislature in 1909 passed a law creating an examiner appointed

Uniform ac-
counts for
cities and
counties

¹ In Massachusetts, the bureau of statistics; in California, the comptroller, etc.

² It would not do to leave this subject without a word as to the Metz Fund, which has provided the means for investigating municipal accounting and for publishing numerous valuable works upon it.

by the governor, and providing for the establishment of a state-wide system of uniform accounts, including all departments and branches of state and local government. The United States Bureau of the Census has done a good deal to enforce uniformity by gathering the financial statistics of cities of over 30,000 population. Hardly a beginning has been made in this country toward giving the state governments power to audit the expenditure of money by local authorities.

**State and
local pur-
chasing
agents**

It has been found that a state or city which employs a purchasing agent to buy needed supplies at wholesale in the open market, and keeps these supplies on hand, issuing them to the various departments as they require them, can save a great deal of money. Supplies can generally be bought to better advantage in the open market than by contract. Every standard article has a regular market price at which it is sold to the world of commerce. There are certain discounts from the market rate which purchasers may obtain by buying in large quantities and paying "cash." Centralized purchasing for all departments and the advantage which can be taken of trade and cash discounts enable the city to buy as cheaply as any factory or store within its limits. Supplies which have to be made to order and public works and buildings must, unless the city undertakes the task itself, be the subject of competitive bidding. A good city charter, however, always provides for the city's rejecting all bids and doing the work itself if the contractor's price is too high.

Public debts

War, flood, fire, and other sudden disasters impose on government burdens greater than can be borne by the revenues of any one year. Extensive public improvements, too, call for a greater investment of the capital of the community than can be saved out of the income of a

particular year. It is customary to provide for the cost of public disasters and improvements by borrowing money on the credit of the nation, state, city, county, or town, as the case may be. It may be asked why governments do not, like private individuals, save in advance, so that they may meet such emergencies without borrowing. It has, however, never been regarded as feasible for a government to create a fund for the purpose of meeting these crises. Government accumulations, if kept in the form of money, would mean the withdrawal of vast quantities of capital from productive employment. If invested, it would involve the government in great difficulties in caring for its investments and it might not, at the time of emergency, be able to reduce its investments to cash. On the whole it has been generally agreed that to borrow and then to save definite amounts to pay off the loan is the wisest policy.

The usual method of borrowing money is by an issue of bonds. Bonds are a promise to pay a given sum of money at the end of a period of years. They bear interest at a rate fixed by the law or ordinance authorizing the issue. The United States has, considering its resources, a very small bonded debt — October 1, 1915, \$1,131,832,788.29. It can borrow money at low rates because of the absolute confidence the public has in its ability to pay.¹

¹ The interest-bearing portion of the national debt was on June 30, 1914 (see *American Year Book*, 1914), distributed as follows:

25. Consols of 1930	\$646,250,150
35. Loan of 1908-1918	63,945,460
45. Loan of 1925	118,489,900
25. Panama Canal Loan '06	54,631,980
25. Panama Canal Loan '08	30,000,000
35. Panama Canal Loan '11	50,000,000
2½s. Postal Savings bonds, '11-'12	3,506,000
2½s. Postal Savings bonds, total '12	1,129,820

\$967,953,510

State debts

The states have not been great borrowers, as their position in our system of government does not necessitate large expenditures on public works. On June 30, 1913,¹ eleven states had no debt at all. The constitutions of the several states place quite strict limitations on the power of the legislature to borrow money. There is sometimes a limit (in New York, \$1,000,000; in Ohio, \$750,000) within which the legislature may borrow freely. Ohio permits no borrowing at all above this minimum, except to defend the state from invasion or insurrection or redeem the existing indebtedness. It is usual, however, except in case of war or insurrection, to require all propositions to create indebtedness above the minimum, if there is one, to be submitted to a popular vote. States borrow generally at from four to six per cent.

City indebtedness

When we turn to city governments, we find that they have been prodigious borrowers.² The parks, boulevards, schools, sewers, waterworks, subways, light, heat and power plants, city halls, and all the rest of the multifarious good things which cities now provide inevitably cost vast sums of money. The Bureau of the Census in its Report on "Financial Statistics of Cities Having a Population of over 30,000" (1911) gives the total indebtedness of such cities³ as \$2,652,615,054. Of this sum \$2,366,430,733 is funded or "bonded" debt. The remainder is short-term loans (usually in anticipation of

¹ The largest state debt at that time was that of Massachusetts, \$117,000,000, New York being a close second with \$108,000,000. — *American Year Book*, 1913, p. 185.

² The bonded debt of the single city of New York is \$1,164,440,884, or considerably larger than the interest-bearing debt of the United States, and over ten times as great as that of the state of New York. Boston has a debt of \$118,000,000; Philadelphia, of \$112,000,000, while practically every city in the country has a substantial indebtedness. — *American Year Book*, 1913, p. 234.

³ Includes county and school district debts where these units are identical with city.

the taxes of the current year) and other temporary obligations. Some persons are very much concerned because cities spend so much money and assume such heavy burdens of debt. Of course no city should borrow more than it can reasonably repay. Short of that, however, the cities should be concerned rather with whether the object of expenditure is worth while and whether the work is efficiently done, than with the amount of the indebtedness.

A distinction should be made between that portion of a municipal indebtedness which a municipality incurs for general improvements such as parks, libraries, schools, or sewers, and that which it incurs for the purpose of building or acquiring income-producing enterprises. The former produce no money income, while the latter, if properly managed, will produce a revenue sufficient to pay the interest on the debt and provide for the ultimate payment of the principal. The Bureau of the Census, in the report quoted in the last paragraph, shows that in 1911, of the total debt of municipalities, \$1,863,800,895 was for general improvements and \$788,814,159 was invested in public service enterprises.

**Debts for
public
utility
enterprises**

The debt-incurring capacity of most cities is limited by state law or city charter to a certain proportion of the assessed valuation of its property. We have already seen some of the consequences in this respect of a low valuation of property. The fact that the law treats both kinds of indebtedness, for income and for non-income producing improvements, alike also works a real hardship. From the bookkeeping standpoint a debt is a debt, but from the practical point of view there is a wide difference between an absolute outlay without hope of financial return and a profitable investment. Cities should have greater latitude in borrowing for investment in public service enterprises. City bond issues usually require, to be valid, a

**Debt limits
of cities**

two-thirds majority of those voting at a special election called for the purpose.

**Repayment
of debts**

Provision is always made, in the law or ordinance authorizing a bond issue, for the payment of the principal. The old method was the establishment of a "sinking fund." By this method a certain sum each year was set aside for investment, in the bonds in question or others. The interest earned by these investments was added to the annual appropriation. Such a fund of course increases rapidly, and it is easy to compute what the amount each year set aside must be to pay off the debt before it finally falls due. The later practice, however, is to number the bonds in series and to make the bonds bearing certain numbers redeemable each year. This is simpler than a sinking fund, as it does not involve the care of investments, and because of the progressive reduction of the interest charge it means a smaller total expenditure.

SUGGESTIONS FOR FURTHER STUDY

An indispensable book on the general subject of this chapter is PLEHN, C. C., *Government Finance in the United States*.

Budget: The most brilliant criticisms of our system are to be found in BRYCE, ch. xvii, and WILSON, WOODROW, *Congressional Government*, ch. iii. See also BEARD, pp. 365-373, 708-713, and *Readings*, pp. 338-342. The actual expenditures of the United States may be kept track of by the use of the Statistical Abstract of the United States. Local expenditures will be found in United States Bureau of the Census, Reports on "Financial Reports of Cities of over 30,000 Population." REINSCH, P. S., *Readings in American State Government*, pp. 56-61; and MUNRO, W. B., *Principles and Methods of Municipal Administration*, ch. x, are very valuable.

For a good account of the English budget system see LOWELL, A. L., *Government of England*, vol. i, pp. 279-291. Two messages from President Taft urging a budget system on Congress may be found in House Document 854, 62d Congress, 2d Session, and Senate Document 1113, 63d Congress, 1st Session.

Teachers may also consult AGGER, E. E., *Budget in American Commonwealths*, Columbia University Studies, vol. xxv, No. 2; BOGART, E. L., *Financial Procedure in the State Legislatures*, Annals of the American Academy of Political Science, vol. viii, pp. 236-258; CLEVELAND, F. A., *A State Budget*, Municipal Research, No. 58, February, 1915.

Efficiency: The movement toward efficiency in government by better accounting methods is best brought out in the publications of the New York bureau of municipal research and the Chicago bureau of public efficiency. *Efficiency in City Government*, Annals of the American Academy of Political and Social Science, vol. xli (May, 1912), and BRUÈRE, HENRY, *The New City Government*, are very valuable. MUNRO, W. B., *Principles and Methods of Municipal Administration*, ch. i, gives a brief sketch.

Indebtedness: BEARD, C. A., *American Government and Politics*, pp. 706-708; PLEHN, C. C., *Introduction to Public Finance*, Part iii. For the actual figures see United States Bureau of the Census, Special Report on Wealth, Debt, and Taxation (1913) and Annual Reports on "Financial Statistics of Cities Having a Population of over 30,000."

SPECIAL NOTE: Secure the report of the state auditor or the comptroller and similar reports for your own city. If local financial statistics are collected by any state officer, secure his report. Also secure copy of general appropriation bill of state and budget of city, if available.

Topics:

The best topics for investigation by the pupil are those which are necessary to fill up the details of this chapter, *i.e.* your state and local budget and accounting systems, their expenditures, debts, etc.

APPENDICES

APPENDIX A

ARTICLES OF CONFEDERATION

To all to whom these presents shall come, we the undersigned Delegates of the States affixed to our names, send greeting :

WHEREAS, The Delegates of the United States of America, in Congress assembled, did, on the 15th day of November, in the year of our Lord 1777, and in the second year of the Independence of America, agree to certain Articles of Confederation and perpetual Union between the States of New Hampshire, Massachusetts Bay, Rhode Island and Providence Plantations, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, and Georgia, in the words following, viz. :

ARTICLES OF CONFEDERATION AND PERPETUAL UNION BETWEEN THE STATES OF NEW HAMPSHIRE, MASSACHUSETTS BAY, RHODE ISLAND AND PROVIDENCE PLANTATIONS, CONNECTICUT, NEW YORK, NEW JERSEY, PENNSYLVANIA, DELAWARE, MARYLAND, VIRGINIA, NORTH CAROLINA, SOUTH CAROLINA, AND GEORGIA.

ARTICLE I. The style of this Confederacy shall be "The United States of America."

ART. II. Each State retains its sovereignty, freedom and independence, and every power, jurisdiction and right, which is not by this Confederation expressly delegated to the United States, in Congress assembled.

ART. III. The said States hereby severally enter into a firm league of friendship with each other for their common defense, the security of their liberties, and their mutual and general welfare, binding themselves to assist each other against all force offered to, or attacks made upon them, or any of them, on account of religion, sovereignty, trade, or any other pretense whatever.

ART. IV. The better to secure and perpetuate mutual friendship and intercourse among the people of the different States of this Union, the free inhabitants of each of these States, paupers, vagabonds, and fugitives from justice excepted, shall be entitled to all

privileges and immunities of free citizens in the several States; and the people of each State shall have free ingress and regress to and from any other State, and shall enjoy therein all the privileges of trade and commerce, subject to the same duties, impositions and restrictions as the inhabitants thereof respectively; *provided*, that such restrictions shall not extend so far as to prevent the removal of property imported into any State, to any other State of which the owner is an inhabitant; *provided also*, that no imposition, duties or restriction shall be laid by any State on the property of the United States, or either of them.

If any person guilty of or charged with treason, felony, or other high misdemeanor in any State, shall flee from justice, and be found in any of the United States, he shall, upon demand of the Governor or executive power of the State from which he fled, be delivered up and removed to the State having jurisdiction of his offense.

Full faith and credit shall be given in each of these States to the records, acts and judicial proceedings of the courts and magistrates of every other State.

ART. V. For the more convenient management of the general interests of the United States, delegates shall be annually appointed, in such manner as the Legislature of each State shall direct, to meet in Congress, on the first Monday in November in every year, with a power reserved to each State to recall its delegates, or any of them, at any time within the year, and to send others in their stead for the remainder of the year.

No State shall be represented in Congress by less than two, nor by more than seven members; and no person shall be capable of being a delegate for more than three years in any term of six years; nor shall any person, being a delegate, be capable of holding any office under the United States, for which he, or another for his benefit, receives any salary, fees or emolument of any kind.

Each State shall maintain its own delegates in a meeting of the States, and while they act as members of the committee of the States.

In determining questions in the United States, in Congress assembled, each State shall have one vote.

Freedom of speech and debate in Congress shall not be impeached or questioned in any court, or place out of Congress; and the members of Congress shall be protected in their persons from arrests and imprisonments during the time of their going to and from, and attendance on Congress, except for treason, felony, or breach of the peace.

ART. VI. No State, without the consent of the United States, in Congress assembled, shall send any embassy to, or receive any embassy from, or enter into any conference, agreement, alliance, or treaty with any King, Prince, or State; nor shall any person holding any office of profit or trust under the United States, or any of them, accept of any present, emolument, office, or title of any kind whatever from any King, Prince, or foreign State; nor shall the United States in Congress assembled, or any of them, grant any title of nobility.

No two or more States shall enter into any treaty, confederation or alliance whatever between them, without the consent of the United States, in Congress assembled, specifying accurately the purposes for which the same is to be entered into, and how long it shall continue.

No State shall lay any imposts or duties, which may interfere with any stipulations in treaties entered into by the United States, in Congress assembled, with any King, Prince, or State, in pursuance of any treaties already proposed by Congress to the courts of France and Spain.

No vessels of war shall be kept up in time of peace by any State, except such number only as shall be deemed necessary by the United States, in Congress assembled, for the defense of such State, or its trade; nor shall any body of forces be kept up by any State, in time of peace, except such number only, as in the judgment of the United States, in Congress assembled, shall be deemed requisite to garrison the forts necessary for the defense of such State; but every State shall always keep up a well regulated and disciplined militia, sufficiently armed and accoutered, and shall provide and have constantly ready for use, in public stores, a due number of field pieces and tents, and a proper quantity of arms, ammunition and camp equipage.

No State shall engage in any war without the consent of the United States, in Congress assembled, unless such State be actually invaded by enemies, or shall have received certain advice of a resolution being formed by some nation of Indians to invade such State, and the danger is so imminent as not to admit of a delay till the United States, in Congress assembled, can be consulted. Nor shall any State grant commissions to any ships or vessels of war, nor letters of marque or reprisal, except it be after a declaration of war by the United States, in Congress assembled, and then only against the Kingdom or State, and the subjects thereof, against which war has been so declared; and under such regulations as shall be established by the United States,

in Congress assembled ; unless such State be infested by pirates, in which case vessels of war may be fitted out for that occasion, and kept so long as the danger shall continue, or until the United States, in Congress assembled, shall determine otherwise.

ART. VII. When land forces are raised by any State for the common defense, all officers of or under the rank of colonel shall be appointed by the Legislature of each State, respectively, by whom such forces shall be raised, or in such manner as such State shall direct, and all vacancies shall be filled up by the State which first made the appointment.

ART. VIII. All charges of war, and all other expenses that shall be incurred for the common defense or general welfare, and allowed by the United States, in Congress assembled, shall be defrayed out of the common treasury, which shall be supplied by the several States, in proportion to the value of all land within each State, granted to or surveyed for any person, as such land and the buildings and improvements thereon shall be estimated according to such mode as the United States, in Congress assembled, shall, from time to time, direct and appoint. The taxes for paying that proportion shall be laid and levied by the authority and direction of the Legislatures of the several States, within the time agreed upon by the United States, in Congress assembled.

ART. IX. The United States, in Congress assembled, shall have the sole and exclusive right and power of determining on peace and war, except in the cases mentioned in the sixth article; of sending and receiving ambassadors; entering into treaties and alliances; *provided*, that no treaty of commerce shall be made whereby the legislative power of the respective States shall be restrained from imposing such imposts and duties on foreigners, as their own people are subjected to, or from prohibiting the exportation or importation of any species of goods or commodities whatsoever; of establishing rules for deciding, in all cases, what captures on land or water shall be legal, and in what manner prizes taken by land or naval forces in the service of the United States shall be divided or appropriated; of granting letters of marque and reprisal in times of peace; appointing courts for the trial of piracies and felonies committed on the high seas, and establishing courts for receiving and determining finally appeals in all cases of captures; *provided*, that no member of Congress shall be appointed a judge of any of the said courts.

The United States, in Congress assembled, shall also be the last resort on appeal in all disputes and differences now subsisting, or

that hereafter may arise, between two or more States concerning boundary, jurisdiction, or any other cause whatever; which authority shall always be exercised in the manner following: Whenever the legislative or executive authority, or lawful agent of any State in controversy with another, shall present a petition to Congress, stating the matter in question, and praying for a hearing, notice thereof shall be given, by order of Congress, to the legislative or executive authority of the other State in controversy, and a day assigned for the appearance of the parties by their lawful agents, who shall then be directed to appoint, by joint consent, commissioners or judges to constitute a court for hearing and determining the matter in question; but if they can not agree, Congress shall name three persons out of each of the United States, and from the list of such persons each party shall alternately strike out one, the petitioners beginning, until the number shall be reduced to thirteen; and from that number not less than seven, nor more than nine names, as Congress shall direct, shall, in the presence of Congress, be drawn out by lot, and the persons whose names shall be so drawn, or any five of them, shall be commissioners or judges to hear and finally determine the controversy, so always as a major part of the judges who shall hear the cause shall agree in the determination; and if either party shall neglect to attend at the day appointed, without showing reasons, which Congress shall judge sufficient, or being present shall refuse to strike, the Congress shall proceed to nominate three persons out of each State, and the Secretary of Congress shall strike in behalf of such party absent or refusing; and the judgment and sentence of the court to be appointed, in the manner before prescribed, shall be final and conclusive; and if any of the parties shall refuse to submit to the authority of such court, or to appear or defend their claim or cause, the court shall, nevertheless, proceed to pronounce sentence or judgment, which shall in like manner be final and decisive, the judgment or sentence and other proceedings being in either case transmitted to Congress, and lodged among the Acts of Congress for the security of the parties concerned; *provided*, that every commissioner, before he sits in judgment, shall take an oath, to be administered by one of the Judges of the Supreme or Superior Court of the State where the cause shall be tried, "well and truly to hear and determine the matter in question, according to the best of his judgment, without favor, affection, or hope of reward"; *provided, also*, that no State shall be deprived of territory for the benefit of the United States.

All controversies concerning the private right of soil claimed under

different grants of two or more States, whose jurisdictions as they may respect such lands, and the States which passed such grants, are adjusted, the said grants, or either of them, being at the same time claimed to have originated antecedent to such settlement of jurisdiction, shall, on the petition of either party to the Congress of the United States, be finally determined as near as may be in the same manner as is before described for deciding disputes respecting territorial jurisdiction between different States.

The United States, in Congress assembled, shall also have the sole and exclusive right and power of regulating the alloy and value of coin struck by their own authority, or by that of the respective States; fixing the standard of weights and measures throughout the United States; regulating the trade, and managing all affairs with the Indians, not members of any of the States; *provided*, that the legislative right of any State, within its own limits, be not infringed or violated; establishing and regulating postoffices from one State to another, throughout all the United States, and exacting such postage on the papers passing through the same as may be requisite to defray the expenses of the said office; appointing all officers of the land forces in the service of the United States, excepting regimental officers; appointing all the officers of the naval forces, and commissioning all officers whatever in the service of the United States; making rules for the government and regulation of the said land and naval forces, and directing their operations.

The United States, in Congress assembled, shall have authority to appoint a committee, to sit in the recess of Congress, to be denominated a "Committee of the States," and to consist of one delegate from each State; and to appoint such other committees and civil officers as may be necessary for managing the general affairs of the United States under their direction; to appoint one of their number to preside; *provided*, that no person be allowed to serve in the office of President more than one year in any term of three years; to ascertain the necessary sums of money to be raised for the service of the United States, and to appropriate and apply the same for defraying the public expenses; to borrow money or emit bills on the credit of the United States, transmitting every half year to the respective States an account of the sums of money so borrowed or emitted; to build and equip a navy; to agree upon the number of land forces, and to make requisitions from each State for its quota, in proportion to the number of white inhabitants in such State, which requisition shall be binding, and thereupon the Legislature of each State shall appoint

the regimental officers, raise the men, and clothe, arm and equip them in a soldier-like manner, at the expense of the United States; and the officers and men so clothed, armed and equipped shall march to the place appointed, and within the time agreed on by the United States, in Congress assembled. But if the United States, in Congress assembled, shall, on consideration of circumstances, judge proper that any State should not raise men, or should raise a smaller number than its quota, and that any other State should raise a greater number of men than the quota thereof, such extra number shall be raised, officered, clothed, armed, and equipped in the same manner as the quota of such State, unless the Legislature of such State shall judge that such extra number can not be safely spared out of the same, in which case they shall raise, officer, clothe, arm, and equip as many of such extra number as they judge can be safely spared. And the officers and men so clothed, armed, and equipped shall march to the place appointed, and within the time agreed on by the United States, in Congress assembled.

The United States, in Congress assembled, shall never engage in a war, nor grant letters of marque and reprisal in time of peace, nor enter into any treaties or alliances, nor coin money, nor regulate the value thereof, nor ascertain the sums and expenses necessary for the defense and welfare of the United States, or any of them, nor emit bills, nor borrow money on the credit of the United States, nor appropriate money, nor agree upon the number of vessels of war to be built or purchased, or the number of land or sea forces to be raised, nor appoint a commander-in-chief of the army or navy, unless nine States assent to the same, nor shall a question on any other point, except for adjourning from day to day, be determined, unless by the votes of a majority of the United States, in Congress assembled.

The Congress of the United States shall have power to adjourn to any time within the year, and to any place within the United States, so that no period of adjournment be for a longer duration than the space of six months; and shall publish the journal of their proceedings monthly, except such parts thereof relating to treaties, alliances, or military operations, as in their judgment require secrecy; and the yeas and nays of the delegates of each State on any question shall be entered on the journal, when it is desired by any delegate; and the delegates of a State, or any of them, at his or their request, shall be furnished with a transcript of the said journal, except such parts as are above excepted, to lay before the Legislatures of the several States.

ART. X. The Committee of the States, or any nine of them, shall be authorized to execute, in the recess of Congress, such of the powers of Congress as the United States, in Congress assembled, by the consent of nine States, shall, from time to time, think expedient to vest them with; *provided*, that no power be delegated to the said committee, for the exercise of which, by the Articles of Confederation, the voice of nine States in the Congress of the United States assembled is requisite.

ART. XI. Canada acceding to this Confederation, and joining in the measures of the United States, shall be admitted into, and entitled to all the advantages of this Union; but no other colony shall be admitted into the same, unless such admission be agreed to by nine States.

ART. XII. All bills of credit emitted, moneys borrowed and debts contracted, by or under the authority of Congress, before the assembling of the United States, in pursuance of the present Confederation, shall be deemed and considered as a charge against the United States, for payment and satisfaction whereof the said United States and the public faith are hereby solemnly pledged.

ART. XIII. Every State shall abide by the determinations of the United States, in Congress assembled, on all questions which by this Confederation are submitted to them. And the Articles of this Confederation shall be inviolably observed by every State, and the Union shall be perpetual; nor shall any alteration at any time hereafter be made in any of them, unless such alteration be agreed to in a Congress of the United States, and be afterwards confirmed by the Legislatures of every State.

AND WHEREAS, It hath pleased the Great Governor of the world to incline the hearts of the Legislatures we respectively represent in Congress, to approve of, and to authorize us to ratify the said Articles of Confederation and perpetual Union. Know ye that we, the undersigned delegates, by virtue of the power and authority to us given for that purpose, do by these presents, in the name and in behalf of our respective constituents, fully and entirely ratify and confirm each and every of the said Articles of Confederation and perpetual Union, and all and singular the matters and things therein contained.

And we do further solemnly plight and engage the faith of our respective constituents, that they shall abide by the determinations of the United States, in Congress assembled, on all questions which by the said Confederation are submitted to them; and that the

articles thereof shall be inviolably observed by the States we respectively represent, and that the Union shall be perpetual.

In witness whereof, we have hereunto set our hands in Congress. Done at Philadelphia, in the State of Pennsylvania, the 9th day of July, in the year of our Lord, 1778, and in the 3d year of the Independence of America.

JOSIAH BARTLETT,	JOHN WENTWORTH, JR., Aug. 8, 1778.	} On the part and behalf of the State of New Hampshire.
JOHN HANCOCK, SAMUEL ADAMS, ELBRIDGE GERRY,	FRANCIS DANA, JAMES LOVELL, SAMUEL HOLTON,	} On the part and behalf of the State of Massachu- s'ts Bay.
WILLIAM ELLERY, HENRY MARCHANT,	JOHN COLLINS,	} On the part and behalf of the State of Rhode Island and Providence Plantations.
ROGER SHERMAN, SAM'L HUNTINGTON, OLIVER WOLCOTT,	TITUS HOSMER, ANDREW ADAM,	} On the part and behalf of the State of Con- necticut.
JAMES DUANE, FRANCIS LEWIS,	WILLIAM DUER, GOUVERNEUR MORRIS	} On the part and behalf of the State of New York.
JOHN WITHERSPOON,	NATHANIEL SCUDDER	} On the part and behalf of the State of New Jersey November 26, 1778.
ROBERT MORRIS, DANIEL ROBERDEAU, J. BAYARD SMITH, THOMAS MCKEAN,	WILLIAM CLINGAN, JOSEPH REED, July 22, 1778. JOHN DICKINSON, May 5, 1779.	} On the part and behalf of the State of Pennsyl- vania.
NICHOLAS VAN DYKE,		} On the part and behalf of the State of Delaware.
JOHN HANSON, March 1, 1781.	DANIEL CARROLL, March 1, 1781.	} On the part and behalf of the State of Maryland.
RICHARD HENRY LEE, JOHN BANISTER, THOMAS ADAMS,	JOHN HARVIE, F. LIGHTFOOT LEE,	} On the part and behalf of the State of Virginia.
JOHN PENN, July 21, 1778.	CORNELIUS HARNETT, JOHN WILLIAMS,	} On the part and behalf of the State of North Carolina.
HENRY LAURENS, WM. HENRY DRAYTON, JOHN MATTHEWS,	RICHARD HUTSON, THOS. HEYWARD, JR.	} On the part and behalf of the State of South Carolina.
JOHN WALTON, July 24, 1778.	EDWARD TELFAIR, EDW'D LONGWORTHY,	} On the part and behalf of the State of Georgia.

The Articles of Confederation were ratified by the States as follows :

South Carolina	February 5, 1778	Massachusetts	March 10, 1778
New York	February 6, 1778	North Carolina	April 5, 1778
Rhode Island	February 9, 1778	New Jersey	November 19, 1778
Connecticut	February 12, 1778	Virginia	December 15, 1778
Georgia	February 26, 1778	Delaware	February 1, 1779
New Hampshire	March 4, 1778	Maryland	January 30, 1781
Pennsylvania	March 6, 1778		

The ratification by all the States was formally announced to the public March 1, 1781.

APPENDIX B

CONSTITUTION OF THE UNITED STATES

PREAMBLE

We, the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.

ARTICLE I

LEGISLATIVE POWERS VESTED IN CONGRESS

SECTION 1. All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

COMPOSITION OF THE HOUSE OF REPRESENTATIVES

SEC. 2. 1. The House of Representatives shall be composed of members chosen every second year by the people of the several States, and the electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State Legislature.

Qualification of Representatives.

2. No person shall be a Representative who shall not have attained the age of twenty-five years and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State in which he shall be chosen.

Apportionment of Representatives and direct taxes — Census.

3. [Representatives and direct taxes shall be apportioned among the several States which may be included within this Union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three fifths of all other persons. The actual enumeration shall be made within three years after the first meeting of the Congress of the United States, and

within every subsequent term of ten years, in such manner as they shall by law direct. The number of Representatives shall not exceed one for every thirty thousand, but each State shall have at least one Representative; and until such enumeration shall be made, the State of New Hampshire shall be entitled to choose three, Massachusetts eight, Rhode Island and Providence Plantations one, Connecticut five, New York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.]

This clause has been superseded, so far as it relates to representation, by Section 2 of the Fourteenth Amendment to the Constitution.

Filling of vacancies in representation.

4. When vacancies happen in the representation from any State, the executive authority thereof shall issue writs of election to fill such vacancies.

Selection of officers — Power of impeachment.

5. The House of Representatives shall choose their Speaker and other officers, and shall have the sole power of impeachment.

OF THE SENATE

Number of senators.

SEC. 3. 1. The Senate of the United States shall be composed of two Senators from each State, chosen by the Legislature thereof, for six years, and each Senator shall have one vote.

Classification of senators — Filling of vacancies.

2. Immediately after they shall be assembled in consequence of the first election, they shall be divided as equally as may be into three classes. The seats of the Senators of the first class shall be vacated at the expiration of the second year, of the second class at the expiration of the fourth year, and of the third class at the expiration of the sixth year, so that one third may be chosen every second year; and if vacancies happen, by resignation or otherwise, during the recess of the Legislature of any State, the executive thereof may make temporary appointments until the next meeting of the Legislature, which shall then fill such vacancies.

Qualifications of senators.

3. No person shall be a Senator who shall not have attained the age of thirty years, and been nine years a citizen of the United States,

and who shall not, when elected, be an inhabitant of the State for which he shall be chosen.

Vice-President to be president of senate.

4. The Vice-President of the United States shall be president of the Senate, but shall have no voice unless they shall be equally divided.

Selection of officers — President pro tempore.

5. The Senate shall choose their officers, and have a President *pro tempore*, in the absence of the Vice-President, or when he shall exercise the office of President of the United States.

Senate to try impeachments.

6. The Senate shall have the sole power to try all impeachments; when sitting for that purpose, they shall be on oath or affirmation. When the President of the United States is tried, the Chief Justice shall preside; and no person shall be convicted without the concurrence of two thirds of the members present.

Judgment in cases of impeachment.

7. Judgment in cases of impeachment shall not extend further than to removal from office and disqualification to hold and enjoy any office of honor, trust, or profit under the United States; but the party convicted shall, nevertheless, be liable and subject to indictment, trial, judgment, and punishment according to law.

ELECTION OF SENATORS AND REPRESENTATIVES — MEETINGS OF CONGRESS

Control of congressional elections.

SEC. 4. 1. The times, places, and manner of holding elections for Senators and Representatives shall be prescribed in each State by the Legislature thereof; but the Congress may at any time, by law, make or alter such regulations, except as to the places of choosing Senators.

Time for assembling of Congress.

2. The Congress shall assemble at least once in every year, and such meeting shall be on the first Monday in December, unless they shall, by law, appoint a different day.

POWERS AND DUTIES OF EACH HOUSE OF CONGRESS

Sole judge of qualifications of members — Regulations as to quorum.

SEC. 5. 1. Each house shall be the judge of the elections, returns, and qualifications of its own members, and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner and under such penalties as each house may provide.

Each house to determine its own rules.

2. Each house may determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two thirds, expel a member.

Journals and yeas and nays.

3. Each house shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may, in their judgment, require secrecy; and the ayes and noes of the members of either house, on any question, shall, at the desire of one fifth of those present, be entered on the journal.

Adjournment.

4. Neither house, during the session of Congress, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two houses shall be sitting.

COMPENSATION, PRIVILEGES, AND DISABILITIES OF SENATORS AND REPRESENTATIVES

Compensation — Privileges.

SEC. 6. 1. The Senators and Representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the treasury of the United States. They shall, in all cases, except treason, felony, and breach of the peace, be privileged from arrest during their attendance at the session of their respective houses, and in going to and returning from the same; and for any speech or debate in either house, they shall not be questioned in any other place.

Disability to hold other offices.

2. No Senator or Representative shall, during the time for which he was elected, be appointed to any civil office under the authority

of the United States, which shall have been created, or the emoluments whereof shall have been increased, during such time; and no person holding any office under the United States shall be a member of either house during his continuance in office.

[See also Section 3 of the Fourteenth Amendment.]

MODE OF PASSING LAWS

Revenue bills to originate in house.

SEC. 7. 1. All bills for raising revenue shall originate in the House of Representatives, but the Senate may propose or concur with amendments as on other bills.

Laws, how enacted — Veto power of President.

2. Every bill which shall have passed the House of Representatives and the Senate, shall, before it becomes a law, be presented to the President of the United States; if he approve, he shall sign it, but if not, he shall return it, with his objections, to that house in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it. If after such reconsideration two thirds of that house shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and if approved by two thirds of that house it shall become a law. But in all such cases the votes of both houses shall be determined by ayes and noes; and the names of the persons voting for and against the bill shall be entered on the journal of each house, respectively. If any bill shall not be returned by the President within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the Congress, by their adjournment, prevent its return, in which case it shall not be a law.

Concurrent orders, resolutions, etc., to be passed on by President.

3. Every order, resolution, or vote, to which the concurrence of the Senate and the House of Representatives may be necessary (except on a question of adjournment), shall be presented to the President of the United States; and, before the same shall take effect, shall be approved by him, or, being disapproved by him, shall be repassed by two thirds of the Senate and House of Representatives, according to the rules and limitations prescribed in the case of a bill.

POWERS GRANTED TO CONGRESS

Taxation.

SEC. 8. 1. The Congress shall have power to lay and collect taxes, duties, imposts, and excises, to pay the debts and provide for the common defense and general welfare of the United States; but all duties, imposts, and excises shall be uniform throughout the United States.

Borrowing of money.

2. To borrow money on the credit of the United States.

Regulation of commerce.

3. To regulate commerce with foreign nations, and among the several States, and with the Indian tribes.

Naturalization and bankruptcy.

4. To establish an uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States.

Money, weights, and measures.

5. To coin money, regulate the value thereof and of foreign coins, and fix the standard of weights and measures.

Counterfeiting.

6. To provide for the punishment of counterfeiting the securities and current coin of the United States.

Post offices.

7. To establish post offices and post roads.

Patents and copyrights.

8. To promote the progress of science and useful arts, by securing, for limited times, to authors and inventors, the exclusive right to their respective writings and discoveries.

Inferior courts.

9. To constitute tribunals inferior to the Supreme Court.

Piracies, felonies, etc.

10. To define and punish piracies and felonies committed on the high seas, and offenses against the laws of nations.

War, marque and reprisal.

11. To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water.

Army.

12. To raise and support armies; but no appropriation of money to that use shall be for a longer term than two years.

Navy.

13. To provide and maintain a navy.

Land and naval forces.

14. To make rules for the government and regulation of the land and naval forces.

Calling out militia.

15. To provide for calling forth the militia to execute the laws of the Union, suppress insurrections, and repel invasions.

Organizing, arming, and disciplining militia.

16. To provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the States, respectively, the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress.

Exclusive legislation over District of Columbia, etc.

17. To exercise exclusive legislation, in all cases whatsoever, over such district (not exceeding ten miles square) as may, by cession of particular States, and the acceptance of Congress, become the seat of government of the United States, and to exercise like authority over all places purchased by the consent of the Legislature of the State in which the same shall be, for the erection of forts, magazines, arsenals, dockyards, and other needful buildings.

To enact laws necessary to enforce Constitution, etc.

18. To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the Government of the United States, or in any department or officer thereof.

[For other powers, see Article II, Section 1; Article III, Sections 2 and 3; Article IV, Sections 1-3; and Article V.]

LIMITATIONS ON POWERS GRANTED TO THE UNITED STATES

Slave trade.

SEC. 9. 1. The migration or importation of such persons as any of the States now existing shall think proper to admit, shall not be

prohibited by Congress prior to the year one thousand eight hundred and eight; but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person.

Writ of habeas corpus not to be suspended — Exception.

2. The privilege of the writ of habeas corpus shall not be suspended, unless when, in cases of rebellion or invasion, the public safety may require it.

Ex post facto laws and bills of attainder prohibited.

3. No bill of attainder or ex post facto law shall be passed.

Direct taxes.

4. No capitation or other direct tax shall be laid, unless in proportion to the census or enumeration hereinbefore directed to be taken.

Exports not to be taxed.

5. No tax or duty shall be laid on articles exported from any State.

No preference to be given to ports of any State — Interstate shipping.

6. No preference shall be given, by any regulation of commerce or revenue, to the ports of one State over those of another; nor shall vessels bound to or from one State be obliged to enter, clear, or pay duties in another.

Money, how drawn from treasury — Financial statements to be published.

7. No money shall be drawn from the treasury, but in consequence of appropriations made by law; and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time.

Titles of nobility not to be granted — Acceptance by government officers of favors from foreign powers.

8. No title of nobility shall be granted by the United States; and no person holding any office of profit or trust under them shall, without the consent of the Congress, accept of any present, emolument, office, or title, of any kind whatever, from any king, prince, or foreign state.

POWERS PROHIBITED TO THE STATES

Limitations of powers of the several States.

SEC. 10. 1. No State shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit

bills of credit; make anything but gold and silver coin a tender in payment of debts; pass any bill of attainder, *ex post facto* law, or law impairing the obligation of contracts, or grant any title of nobility.

State imports and duties.

2. No State shall, without the consent of the Congress, lay any impost or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws; and the net produce of all duties and imposts, laid by any State on imports or exports, shall be for the use of the treasury of the United States; and all such laws shall be subject to the revision and control of the Congress.

Further restrictions on powers of States.

3. No State shall, without the consent of Congress, lay any duty of tonnage, keep troops or ships of war in time of peace, enter into any agreement or compact with another State or with a foreign power, or engage in war, unless actually invaded or in such imminent danger as will not admit of delay.

ARTICLE II

EXECUTIVE DEPARTMENT

Executive power vested in President — Term of office.

SECTION I. 1. The executive power shall be vested in a President of the United States of America. He shall hold his office during the term of four years, and together with the Vice-President chosen for the same term, be elected as follows:

Appointment and number of presidential electors.

2. Each State shall appoint, in such manner as the Legislature thereof may direct, a number of Electors equal to the whole number of Senators and Representatives to which the State may be entitled in the Congress; but no Senator or Representative, or person holding an office of trust or profit under the United States, shall be appointed an Elector.

Mode of electing President and Vice-President.

3. [The Electors shall meet in their respective States and vote, by ballot, for two persons, of whom one at least shall not be an inhabitant of the same state with themselves. And they shall make a list of all the persons voted for, and of the number of votes for

each; which list they shall sign and certify, and transmit, sealed, to the seat of the government of the United States, directed to the President of the Senate. The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes shall be the President, if such number be a majority of the whole number of Electors appointed; and if there be more than one who have such majority, and have an equal number of votes, then the House of Representatives shall immediately choose by ballot one of them for President; and if no person have a majority, then from the five highest on the list, the said house shall, in like manner, choose the President. But in choosing the President the vote shall be taken by States, the representation from each State having one vote; a quorum for this purpose shall consist of a member or members from two thirds of the States, and a majority of all the States shall be necessary to a choice. In every case after the choice of the President, the person having the greatest number of votes of the Electors shall be the Vice-President. But if there should remain two or more who have equal votes, the Senate shall choose from them, by ballot, the Vice-President.]

This clause has been superseded by the Twelfth Amendment to the Constitution.

Time of choosing electors and casting electoral vote.

4. The Congress may determine the time of choosing the Electors, and the day on which they shall give their votes; which day shall be the same throughout the United States.

Qualifications for the office of President.

5. No person except a natural-born citizen, or a citizen of the United States at the time of the adoption of this Constitution, shall be eligible to the office of President; neither shall any person be eligible to that office who shall not have attained the age of thirty-five years, and been fourteen years a resident within the United States.

[See also Article II, Section 1, and Fourteenth Amendment.]

Filling vacancy in office of President.

6. In case of the removal of the President from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the Vice-President, and the Congress may, by law, provide for the case of removal, death,

resignation, or inability, both of the President and Vice-President, declaring what officer shall then act as President, and such officer shall act accordingly, until the disability is removed, or a President shall be elected.

NOTE. — Agreeably with the powers conferred by Clause 6, Section 1, Article II, of the Constitution, at its first session the Forty-ninth Congress in 1886 provided for the succession to the presidency in case of the removal, death; resignation, or inability of the President and Vice-President by directing that the office devolve first upon the Secretary of State, and in case of his inability, for any reason, to perform its duties, it should pass, successively, upon similar conditions, to the Secretary of the Treasury, Secretary of War, Attorney-general, Postmaster-general, Secretary of the Navy, and Secretary of the Interior. If, however, any one of these officers should be of foreign birth, or otherwise disqualified, the presidency passes to the next named in the list.

Compensation of the President.

7. The President shall, at stated times, receive for his services a compensation, which shall neither be increased nor diminished during the period for which he shall have been elected, and he shall not receive within that period any other emolument from the United States or any of them.

Oath to be taken by the President.

8. Before he enters on the execution of his office, he shall take the following oath or affirmation: "I do solemnly swear (or affirm) that I will faithfully execute the office of President of the United States, and will, to the best of my ability, preserve, protect, and defend the Constitution of the United States."

POWERS OF PRESIDENT

Commander-in-chief — May grant reprieves and pardons.

SEC. 2. 1. The President shall be commander-in-chief of the Army and Navy of the United States, and of the militia of the several States when called into the actual service of the United States; he may require the opinion, in writing, of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices, and he shall have power to grant reprieves and pardons for offenses against the United States, except in cases of impeachment.

President may, with concurrence of the senate, make treaties, appoint ambassadors, etc. — Appointment of inferior officers, authority of Congress over.

2. He shall have power, by and with the advice and consent of the Senate, to make treaties, provided two thirds of the Senators present concur; and he shall nominate, and, by and with the advice and consent of the Senate, shall appoint ambassadors, other public ministers and consuls, Judges of the Supreme Court, and all other officers of the United States whose appointments are not herein otherwise provided for and which shall be established by law; but the Congress may, by law, vest the appointment of such inferior officers as they think proper in the President alone, in the courts of law, or in the heads of departments.

President may fill vacancies in office, during recess of senate.

3. The President shall have power to fill up all vacancies that may happen during the recess of the Senate, by granting commissions, which shall expire at the end of their next session.

FURTHER POWERS OF PRESIDENT

President to give advice to Congress — May convene or adjourn it on certain occasions — To receive ambassadors, etc.

SEC. 3. He shall, from time to time, give to the Congress information of the state of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient; he may, on extraordinary occasions, convene both houses, or either of them, and, in case of disagreement between them with respect to the time of adjournment, he may adjourn them to such time as he shall think proper; he shall receive ambassadors and other public ministers; he shall take care that the laws be faithfully executed, and shall commission all the officers of the United States.

[See also Article I, Section 5.]

All civil officers removable by impeachment.

SEC. 4. The President, Vice-President, and all civil officers of the United States shall be removed from office on impeachment for and conviction of treason, bribery, or other high crimes and misdemeanors.

[See also Article I, Section 5.]

ARTICLE III

JUDICIAL DEPARTMENT

Judicial power, how vested — Terms of office and salary of judges.

SECTION 1. The judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish. The Judges, both of the Supreme and inferior courts, shall hold their offices during good behavior, and shall, at stated times, receive for their services a compensation which shall not be diminished during their continuance in office.

[See also Eleventh Amendment.]

JURISDICTION OF UNITED STATES COURTS

Cases that may come before United States courts.

SEC. 2. 1. The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; to all cases affecting ambassadors, other public ministers, and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more States; between a State and citizens of another State; between citizens of different States; between citizens of the same State claiming lands under grants of different States; and between a State, or the citizens thereof, and foreign States, citizens or subjects.

Original and appellate jurisdiction of Supreme Court.

2. In all cases affecting ambassadors, other public ministers, and consuls, and those in which a State shall be a party, the Supreme Court shall have original jurisdiction. In all the other cases before mentioned the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions and under such regulations as the Congress shall make.

[See also Fifth, Sixth, Seventh, and Eighth Amendments.]

3. The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the State where the said crimes shall have been committed; but when not committed within

any State, the trial shall be put at such place or places as the Congress may, by law, have directed.

[See also Fifth, Sixth, Seventh, and Eighth Amendments.]

TREASON

Treason defined.

SEC. 3. 1. Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort.

Conviction.

2. No person shall be convicted of treason, unless on the testimony of two witnesses to the same overt act, or on confession in open court.

Punishment for treason.

3. The Congress shall have power to declare the punishment of treason; but no attainder of treason shall work corruption of blood, or forfeiture, except during the life of the person attainted.

ARTICLE IV

THE STATES AND THE FEDERAL GOVERNMENT

Each State to give full faith and credit to the public acts and records of other States.

SECTION 1. Full faith and credit shall be given in each State to the public acts, records, and judicial proceedings of every other State. And the Congress may, by general laws, prescribe the manner in which such acts, records, and proceedings shall be proved, and the effect thereof.

[See also Fourteenth Amendment.]

Interstate privileges of citizens.

SEC. 2. 1. The citizens of each State shall be entitled to all the privileges and immunities of citizens in the several States.

Extradition between the several States.

2. A person charged in any State with treason, felony, or other crime, who shall flee from justice and be found in another State, shall, on demand of the executive authority of the State from which

he fled, be delivered up, to be removed to the State having jurisdiction of the crime.

Persons held to labor or service in one State, fleeing to another, to be returned.

3. No person held to service or labor in one State, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due.

Admission of new States.

SEC. 3. 1. New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the jurisdiction of any other State; nor any State be formed by the junction of two or more States, or parts of States, without the consent of the Legislatures of the States concerned, as well as of Congress.

Control of the property and territory of the Union.

2. The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States; and nothing in this Constitution shall be so construed as to prejudice any claims of the United States, or of any particular State.

Republican government guaranteed.

SEC. 4. The United States shall guarantee to every State in this Union a republican form of government, and shall protect each of them against invasion; and, on application of the Legislature, or of the Executive (when the Legislature can not be convened), against domestic violence.

ARTICLE V

AMENDMENTS

Amendments, how proposed and adopted.

SECTION 1. The Congress, whenever two thirds of both houses shall deem it necessary, shall propose amendments to this Constitution, or, on the application of the Legislatures of two thirds of the several States, shall call a convention for proposing amendments, which, in either case, shall be valid, to all intents and purposes, as part of this Constitution, when ratified by the Legislatures of three

fourths of the several States or by conventions in three fourths thereof, as the one or the other mode of ratification may be proposed by the Congress; *provided*, that no amendment which may be made prior to the year one thousand eight hundred and eight shall, in any manner, affect the first and fourth clauses in the ninth section of the first article; and that no State, without its consent, shall be deprived of its equal suffrage in the Senate.

ARTICLE VI

PROMISCUOUS PROVISIONS

Debts contracted under the Confederation secured.

SECTION 1. 1. All debts contracted and engagements entered into, before the adoption of this Constitution, shall be as valid against the United States, under this Constitution, as under the Confederation.

[See also Fourteenth Amendment, Section 4.]

Constitution, laws, and treaties of the United States to be supreme.

2. This Constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every State shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.

Who shall take constitutional oath — No religious test as to official qualification.

3. The Senators and Representatives before mentioned, and the members of the several State Legislatures, and all executive and judicial officers, both of the United States and of the several States, shall be bound, by oath or affirmation, to support this Constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United States.

ARTICLE VII

RATIFICATION OF CONSTITUTION

SECTION 1. The ratification of the conventions of nine States shall be sufficient for the establishment of this Constitution between the States so ratifying the same.

DONE in convention, by the unanimous consent of the States present, the seventeenth day of September, in the year of our Lord one thousand seven hundred and eighty-seven, and of the independence of the United States of America the twelfth. In witness whereof, we have hereunto subscribed our names.

GEO. WASHINGTON,
President, and Deputy from Virginia.

NEW HAMPSHIRE

JOHN LANGDON,
NICHOLAS GILMAN.

MASSACHUSETTS

NATHANIEL GORHAM,
RUFUS KING.

NEW JERSEY

WILLIAM LIVINGSTON,
DAVID BREARLY,
WILLIAM PATTERSON,
JONATHAN DAYTON.

PENNSYLVANIA

BENJAMIN FRANKLIN,
THOMAS MIFFLIN,
ROBERT MORRIS,
GEORGE CLYMER,
THOMAS FITZSIMONS,
JARED INGERSOLL,
JAMES WILSON,
GOUVERNEUR MORRIS.

SOUTH CAROLINA

JOHN RUTLEDGE,
CHARLES C. PINCKNEY,
CHARLES PINCKNEY,
PIERCE BUTLER.

DELAWARE

GEORGE READ,
GUNNING BEDFORD, JR.,
JOHN DICKINSON,
RICHARD BASSETT,
JACOB BROOM.

CONNECTICUT

WILLIAM SAMUEL JOHNSON,
ROGER SHERMAN.

NEW YORK

ALEXANDER HAMILTON.

MARYLAND

JAMES MCHENRY,
DANIEL OF ST. TH. JENIFER,
DANIEL CARROLL.

NORTH CAROLINA

WILLIAM BLOUNT,
RICHARD DOBBS SPAIGHT,
HUGH WILLIAMSON.

VIRGINIA

JOHN BLAIR,
JAMES MADISON, JR.

GEORGIA

WILLIAM FEW,
ABRAHAM BALDWIN.

Attest: WILLIAM JACKSON, *Secretary.*

AMENDMENTS

ARTICLE I

FREEDOM OF RELIGION, OF SPEECH, OF THE PRESS, AND RIGHT OF PETITION

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof, or abridging the freedom of speech or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances. [*Proposed September 25, 1789; in effect December 15, 1791.*]

ARTICLE II

RIGHT OF PEOPLE TO BEAR ARMS NOT TO BE INFRINGED

A well-regulated militia being necessary to the security of a free State, the right of the people to keep and bear arms shall not be infringed. [*Id.*]

ARTICLE III

QUARTERING OF TROOPS

No soldier shall, in time of peace, be quartered in any house without the consent of the owner; nor in time of war, but in a manner to be prescribed by law. [*Id.*]

ARTICLE IV

PERSONS AND HOUSES TO BE SECURE FROM UNREASONABLE SEARCHES AND SEIZURES

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized. [*Id.*]

ARTICLE V

TRIALS FOR CRIMES — JUST COMPENSATION FOR PRIVATE PROPERTY TAKEN FOR PUBLIC USE

No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand

jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself; nor be deprived of life, liberty or property, without due process of law; nor shall private property be taken for public use without just compensation. [*Id.*]

ARTICLE VI

CIVIL RIGHTS IN TRIALS FOR CRIMES ENUMERATED

In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense. [*Id.*]

ARTICLE VII

CIVIL RIGHTS IN CIVIL SUITS

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved; and no fact, tried by a jury, shall be otherwise reexamined in any court of the United States than according to the rules of the common law. [*Id.*]

ARTICLE VIII

EXCESSIVE BAIL, FINES, AND PUNISHMENTS PROHIBITED

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted. [*Id.*]

ARTICLE IX

RESERVED RIGHTS OF THE PEOPLE

The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people. [*Id.*]

ARTICLE X

POWERS NOT DELEGATED, RESERVED TO STATES AND PEOPLE
RESPECTIVELY

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States, respectively, or to the people. [*Id.*]

ARTICLE XI

JUDICIAL POWER OF UNITED STATES NOT TO EXTEND TO SUITS
AGAINST A STATE

The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another State, or by citizens or subjects of any foreign State. [*Proposed September 5, 1794; in effect January 8, 1798.*]

ARTICLE XII

ELECTION OF PRESIDENT AND VICE-PRESIDENT

The Electors shall meet in their respective States, and vote by ballot for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same State with themselves; they shall name in their ballots the person voted for as President, and in district ballots the person voted for as Vice-President; and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each, which lists they shall sign and certify, and transmit, sealed, to the seat of the government of the United States, directed to the President of the Senate. The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes for President shall be the President, if such a number be a majority of the whole number of Electors appointed; and if no person have such majority, then from the persons having the highest numbers, not exceeding three, on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President, the votes shall be taken by States, the representation

from each State having one vote; a quorum for this purpose shall consist of a member or members from two thirds of the States, and a majority of all the States shall be necessary to a choice. And if the House of Representatives shall not choose a President, whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice-President shall act as President, as in the case of the death or other constitutional disability of the President. The person having the greatest number of votes as Vice-President shall be the Vice-President, if such number be a majority of the whole number of Electors appointed; and if no person have a majority, then from the two highest numbers on the list the Senate shall choose the Vice-President; a quorum for the purpose shall consist of two thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice-President of the United States. [*Proposed December 12, 1803; in effect September 25, 1804.*]

ARTICLE XIII

SLAVERY PROHIBITED

SECTION 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

SEC. 2. Congress shall have power to enforce this article by appropriate legislation. [*Proposed February 1, 1865; in effect December 18, 1865.*]

ARTICLE XIV

CITIZENSHIP DEFINED — PRIVILEGES OF CITIZENS

Citizenship.

SECTION 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

Apportionment of Representatives.

SEC. 2. Representatives shall be apportioned among the several States, according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of Electors for President and Vice-President of the United States, Representatives in Congress, the executive and judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Disqualification for office — Removal of disability.

SEC. 3. No person shall be a Senator or Representative in Congress, or Elector of President and Vice-President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath as a member of Congress, or as an officer of the United States, or as a member of any State Legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may, by a vote of two thirds of each house, remove such disability.

Public debt not to be questioned — Payment of debts and claims incurred in aid of rebellion forbidden.

SEC. 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations, and claims shall be held illegal and void.

Power of Congress.

SEC. 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article. [*Proposed June 16, 1866; in effect July 28, 1868.*]

ARTICLE XV

ELECTIVE FRANCHISE

Right of certain citizens to vote, established.

SECTION 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States, or by any State, on account of race, color, or previous condition of servitude.

Power of Congress.

SEC. 2. The Congress shall have power to enforce this article by appropriate legislation. [*Proposed February 27, 1869; in effect March 30, 1870.*]

ARTICLE XVI

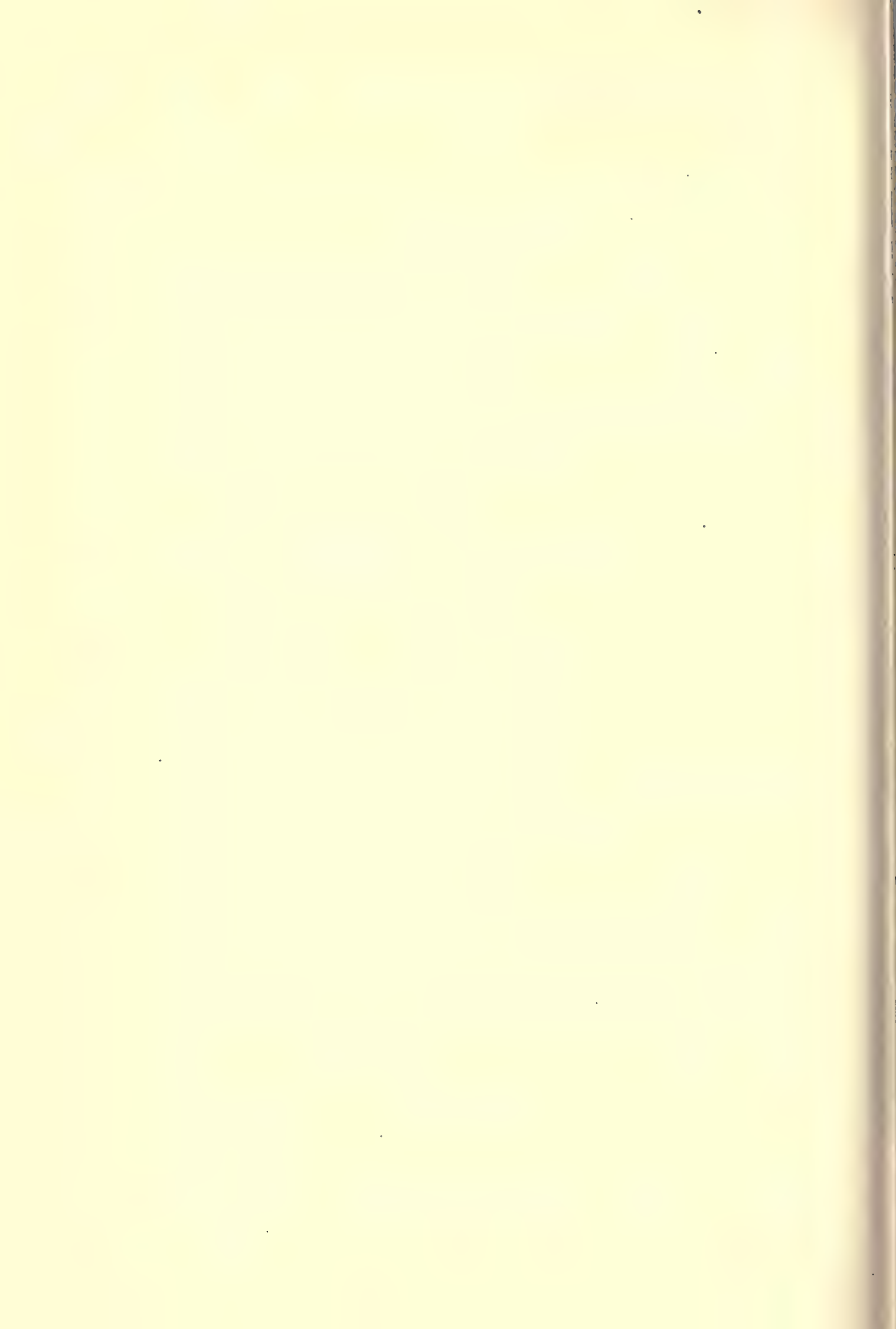
The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States and without regard to any census or enumeration.

ARTICLE XVII

The Senate of the United States shall be composed of two Senators from each State, elected by the people thereof for six years, and each Senator shall have one vote. The Electors in each State shall have the qualifications requisite for Electors of the most numerous branch of the State Legislatures.

When vacancies happen in the representation of any State in the Senate, the executive authority of such State shall issue writs of election to fill such vacancies: *Provided*, that the Legislature of any State may empower the executive thereof to make temporary appointment until the people fill the vacancies by election as the Legislature may direct.

This amendment shall not be considered as to affect the election or term of any Senator chosen before it becomes valid as part of the Constitution.



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